(17,658.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 544.

R. RASMUSSEN, PLAINTIFF IN ERROR,

vs.

THE STATE OF IDAHO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO.

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a In the Supreme Court of the State of Idaho, November Term, 1899.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } No. 577.

Transcript on Appeal.

Appeal from the district court of the fifth judicial district of the State of Idaho in and for Oneida county.

Arthur Brown, S. C. Winters, and John J. Guheen, attorneys for appellant; S. H. Hays, attorney general for the State.

Filed Sept. 20, 1899.

SOL. HASBROUCK, *Clerk.*

1 *County Attorney's Information.*

In the District Court, Fifth Judicial District of Idaho, in and for Oneida County.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

In the district court of the fifth judicial district of Idaho, sitting in and for Oneida county, June term, 1899.

R. Rasmussen is accused by the county attorney of Oneida county, in the fifth judicial district of the State of Idaho, by this information of the crime of driving sheep into the State of Idaho from the county of Box Elder, State of Utah, in violation of the proclamation of the governor of the State of Idaho, committed as follows, to wit:

The said R. Rasmussen, on the 20th day of April, 1899, at the county of Oneida and State of Idaho, and prior to the filing of this information did drive and cause to be driven from the county of Box Elder, Utah, into the county of Oneida, State of Idaho, three bands of sheep, which sheep so driven had been held, ranged and herded in said county of Box Elder, Utah, between the 12th day of April, 1899, and the said 20th day of April, 1899, against and in violation of the proclamation of the governor of the State of Idaho, issued and published on the 12th day of April, 1899.

That the said R. Rasmussen waived examination upon said charge before a committing magistrate of Malad precinct, in said county of Oneida, and was by said magistrate held to answer said charge in this court.

D. C. McDOUGALL,
County Attorney.

Endorsed: In the district court, fifth judicial district of
2 Idaho, in and for Oneida county. State of Idaho, plaintiff, *vs.* R. Rasmussen, defendant. County attorney's information filed in open district court and made a record of this court this the 12th day of June, 1899. D. J. Reynolds, clerk, by W. B. Thews, deputy. D. C. McDougall, county attorney. Names of witnesses: Peter Johnson, Griffeth Davis, David S. Thomas, James Morris.

Court Record, June 12, 1899.

In the District Court, Fifth Judicial District of Idaho, in and for Oneida County.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

On this day the above-named defendant came into court to be arraigned upon the information heretofore filed against him, the said defendant, the clerk thereupon, under the direction of the court, read the information heretofore filed against him, the said defendant, under the name of R. Rasmussen, and asked him if that was his true name, to which he replied that it was, and upon being asked to plead, and being informed of his rights in the premises took the statutory time in which to plead to the information.

(June 13, Same Court and Cause.)

Now comes the defendant in the above-entitled action and interposes a demurrer to the information heretofore filed in said cause, after argument by counsel for and against the said demurrer, and the court not being fully advised of and concerning the said demurrer took the same under advisement.

(June 14, Same Court and Cause.)

The demurrer heretofore interposed by the defendant, and
3 the court having taken the same under consideration, and being fully advised of and concerning the same, overruled the said demurrer, to which ruling counsel for the defendant excepted, whereupon the defendant entered his plea of "not guilty."

(Same Court and Cause.)

The motion heretofore interposed to quash the information heretofore filed in this action, and the same having been duly considered, by the court, it is ordered that the said motion be and the same is hereby denied. To which ruling the defendant's counsel excepted, whereupon defendant entered his pl-a of not guilty.

(Same Court and Cause and Date.)

On this day came on regularly for trial the above-entitled cause, D. C. McDougall, John A. Bagley and Geo. E. Gray, Esqs., appear-

ing on part of the prosecution, and Messrs. Winters and Guheen and Arthur Brown appearing on part of the defendant, the clerk thereupon, under direction of the court, placed in the jury-box the names of the persons heretofore summonsed to serve as jurors and proceeded to draw therefrom a jury; and the following is the jury duly sworn to well and truly try the matter in issue, and a true verdict render according to the law and the evidence, viz: Charles Munn, John Larsen, Ben. D. Jones, Thomas Daniels, Sr., John Mandry, Morgan P. Jones, William McDermit, John L. Thomas, Richard Morse, Charles Walker, L. S. Barnard and D. P. Davis. Whereupon counsel for plaintiff stated the case to the jury on part of the prosecution, and R. Rasmussen, the defendant in the case, was called to the witness stand, by consent of counsel was duly sworn, examined and cross-examined on part of the prosecution,
4 and here the evidence closed, defendant having introduced no witnesses, the cause was thereupon submitted to the jury without argument, the court instructed the jury in the law as to its duty; whereupon the said jury retired to deliberate upon their verdict, with Hugh Jones duly sworn an officer to take charge of the said jury and keep them together in some private and convenient place and return them into court when they had agreed upon their verdict.

And now on this same day came the jury into court, all being called and found to be present, were asked by the court if they had agreed on their verdict, they, through their foreman, answered they had, and presented to the court their verdict which was filed by the clerk and recorded in the following language, to wit:

STATE OF IDAHO }
vs.
R. RASMUSSEN. }

We the jury, duly sworn to try the above-entitled action, find the defendant guilty.

CHARLES MUNN, *Foreman.*

(June 15, Same Court and Cause.)

The defendant with his attorney *with his attorneys* came into court, the defendant was duly informed by the court of the nature of the information found against him for the crime of driving sheep into the State of Idaho, from Box Elder county, in violation of the governor's proclamation, committed on the 20th day of April, 1899. Of the arraignment and plea of not guilty. The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him; to which he replied that he had none, and no sufficient cause being shown or appearing to the court, — thereupon rendered its judgment, that whereas the said R. Rasmussen, having been duly convicted of crime of violating
5 the governor's proclamation, it is therefore ordered, adjudged and decreed, that the said R. Rasmussen is guilty of the crime of violating the governor's proclamation, and that the

said R. Rasmussen be and he is hereby fined in the sum of three hundred dollars and costs of this action.

Demurrer.

In the District Court, Fifth Judicial District, in and for the County of Oneida, State of Idaho.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

Comes now the defendant in the above-entitled action and demurs to the information heretofore filed in said cause, and for grounds of demurrer says:

1st.

That said information does not state facts sufficient to constitute a public offense, or any offense known to the laws of the State of Idaho.

2d.

That said information is ambiguous, unintelligible and uncertain, in this: It is uncertain as to whether the proclamation of the governor of the State of Idaho was violated by holding sheep in Box Elder county, Utah, or by driving them into the State of Idaho. It is also ambiguous as to whether the defendant is charged with violating the proclamation of the governor of Idaho, or of violating some law of the State of Idaho. It is unintelligible and uncertain as to what proclamation of the governor of the State of Idaho defendant is accused of violating. It is also ambiguous and uncertain as to whether the defendant, or some one else, held, ranged or herded the said sheep in Box Elder county, Utah, between the 12th day of April, 1899, and the 15th day of April, 1899; it is also uncertain as to whether defendant received said sheep in charge before, or after, the issuance and publication of said proclamation; it is also uncertain as to whether defendant upon entering the county of Oneida with said sheep forthwith notified the deputy inspector of said county of Oneida of his entering said county.

Wherefore defendant asks to be dismissed and discharged.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

Filed 13th day of June, 1899.

Motion to Quash Information.

In the District Court, Fifth Judicial District, in and for Oneida County, Idaho.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

Comes now the defendant and moves the court to quash the information heretofore filed in said action, and to discharge the defendant for the following reasons:

1st. That said defendant never was examined upon the charge mentioned in said information before any officer authorized to hold examinations.

2d. That said defendant was never committed upon said charge by any magistrate in the State of Idaho.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

Filed June 13, 1899.

7 *Notice of Appeal.*

In the District Court, Fifth Judicial District of Idaho, in and for Oneida County.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

The above-named defendant hereby appeals and gives notice of appeal from the judgment and conviction rendered in said cause, on the 15th day of June, 1899, and from the whole of the same to the supreme court of the State of Idaho.

ARTHUR BROWN,
S. C. WINTERS,
Attorneys for Defendant.

June 15, 1899.

Service of a copy of the foregoing notice is hereby admitted.
June 15, 1899.

JOHN E. BAGLEY,
GEORGE E. GRAY,
D. C. McDOUGALL,
Attorneys for Plaintiff.

Filed June 15, 1899.

Bill of Exceptions.

In the District Court, Fifth Judicial District, in and for the County of Oneida, State of Idaho.

STATE OF IDAHO, Plaintiff,
vs.
R. RASMUSSEN, Defendant.

In the above-entitled cause the said defendant was arraigned in the said court on the 13th day of June, 1899.

At the time of his arraignment, the prosecution appeared by D. C. McDougall, prosecuting attorney, and by John Bagley, associate counsel, and the said defendant by S. C. Winters and
8 Arthur Brown, his counsel. The defendant, by his counsel, made a motion to quash the indictment, which motion was in writing, and is hereto annexed; at the same time the defendant, by his counsel, filed a demurrer hereto annexed.

Motion to Quash Information.

(Title of the Court and Cause.)

Comes now the defendant, and moved the court to quash the information heretofore filed in said action, and to discharge the defendant for the following reasons:

1st. That said defendant never was examined upon the charge mentioned in said information, before any officer authorized to hold examinations.

2d. That said defendant was never committed upon said charge by any magistrate in the State of Idaho.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

Demurrer.

(Title of the Court and Cause.)

Comes now the defendant in the above-entitled action, and demurs to the information heretofore filed in said cause, and for grounds of demurrer says:

1st. That said information does not state facts sufficient to constitute a public offense, or any offense known to the laws of the State of Idaho.

2d. That said information is ambiguous, unintelligible and uncertain in this: It is uncertain as to whether the proclamation of the governor of the State of Idaho was violated by holding sheep in Box Elder county, Utah, or by driving them into the State of
9 Idaho. It is also ambiguous as to whether the defendant is charged with violating a proclamation of the governor of

Idaho, or of violating some law of the State of Idaho. It is unintelligible and uncertain as to what proclamation of the governor of the State of Idaho defendant is accused of violating. It is also ambiguous and uncertain as to whether the defendant, or some one else, held, ranged, or herded the said sheep in Box Elder county, Utah, between the 12th day of April, 1899, and the 15th day of April, 1899. It is also uncertain as to whether the defendant received the said sheep in charge before, or after, the issuance and publication of said proclamation; it is also uncertain as to whether defendant, upon entering the county of Oneida with said sheep, forthwith notified the deputy inspector of said county of Oneida of his entering said county.

Wherefore defendant asks to be dismissed and discharged.

WINTERS & GUHEEN AND
ARTHUR BROWN,
Attorneys for Defendant.

On the said 13th day of June, 1899, said motion to quash the indictment and demurrer came on for argument, said counsel appearing for the defendant, and arguing the same, and the prosecuting attorney and associate counsel appearing for the State, and arguing the same, which motion and demurrer were taken into consideration by the court, and after due consideration thereof the court denied the said motion to quash and overruled the said demurrer, and thereupon the said defendant pleaded to the information, not guilty.

On the said 14th day of June said cause came on for trial, at which the following proceedings were had:

10 1st.

Plaintiff offers in evidence document marked "Plaintiff's Exhibit I."

Mr. BROWN: We object to it, if your honor please, and object to the introduction of any of this testimony, for the reason:

1st.

That there is no information stating any crime.

2d.

There is no statement or allegation of this proclamation in the information; it does not recite it or state it in substance; the facts of this proclamation are not stated in the information.

3d.

This document is not authenticated in a manner to entitle it to be received in evidence. This document purports to be a proclamation of the governor of the State of Idaho. It is an act of the executive that must be proven, the statutes say, by the records, but at all events there must be a certified copy of it. The records, of course, are kept at the State department at Boise, but there must be

a true copy of the original, aad there is no such certificate here, if I have read it right. It could not be the original, the original must be preserved and filed at Boise; this has never been filed anywhere. It does not purport to be *a* certified, and for that reason we object to it.

COURT: Objections overruled.

Exceptions to the ruling of the court.

Mr. BROWN: The defendant is here, and at the suggestion of the prosecution I offer him as a witness, and waive any objection on the ground that he is the defendant, and permit him to be sworn as a witness, although the evidence might criminate himself.

11 Mr. BAGLEY: This is done to expedite matters, in order to prevent sending into the country for another witness.

R. RASMUSSEN, being first duly sworn, testified as follows:

Q. What is your name?
A. R. Rasmussen.
Q. Residence?
A. My residence—Spring City, Utah.
Q. What is your occupation?
A. Handling sheep.
Q. You are the defendant in this case?
A. Yes, sir.
Q. I will ask you if you brought or caused to be brought, any sheep into the State of Idaho, in the county of Oneida, on or about the 20th day of April, 1899?
A. No, sir.
Q. You say you did not?
A. I did not.
Q. Do you own any sheep, Mr. Rasmussen?
A. No, sir.
Mr. BROWN: Let me ask him a question.
Q. You were herding for Knollins and their sheep were brought in about that time?
A. Not about that time.
Q. When was it?
A. About the 12th or 13th.

By Mr. BAGLEY:

Q. Did you have any sheep in charge between the 12th and 20th of April, 1899?
A. Yes, sir.
Q. In what capacity did you have these sheep in charge, I mean as herder or owner?
A. As foreman.
Q. As such foreman you were directing the management of these sheep and saw to the herding of them?
A. Yes, sir; mostly.
Q. Where were these sheep ranged, held or herded from the 12th day of April up to the 20th day of April, 1899?

A. You might say they were not ranged any place; we were driving them during that time.
Q. Where were they during the 12th day of April, 1899?
A. Box Elder county.
Q. State of Utah?
A. Yes, sir.
Q. Where did you move them from there up to the 20th day of April?
A. From there I moved them into Idaho.
Q. Into what county?
A. I think they came into Cassia county, and from there into Oneida county.
12 Q. Did you bring them into Oneida county?
A. Yes, sir.
Q. About what date did they enter Oneida county?
A. About the 16th or 17th.
Q. Of April, 1899?
A. Part of them.
Q. About how many sheep were there that were brought from Box Elder county, Utah, into Oneida county, Idaho?
A. Six herds, I think.
Q. How many head did they aggregate?
A. About 15,000.
Q. As I understand you had these sheep in charge as foreman?
A. Yes, sir.
Q. And under your directions and instructions they were brought from Box Elder county, Utah, into Oneida county, Idaho?
A. Yes, sir.
Q. These sheep were held and herded or driven to Box Elder county, Utah, after the 12th day of April, 1899, and before the 20th day of April, 1899?
A. Yes, sir; they were driven through Box Elder county.
Q. And they were brought into Oneida county, Idaho, after they had been driven through Box Elder county, Utah?
A. Yes, sir.

Cross-examination by Mr. BROWN:

Q. You were foreman, for whom were you working?
A. A. J. Knollin & Co.
Q. Were these sheep which you had charge of wintered?

Mr. BAGLEY: We think this is immaterial; object to it as being immaterial and irrelevant.

Mr. BROWN: As I understand the facts to be a part of these sheep were wintered near Gunnison, in southern Utah, and not near the counties mentioned, and herded and held there, and this spring were driven by what is known as the western route, west of Salt Lake, through Box Elder into Cassia, and from Cassia into Oneida county. I offer to show that.

The COURT: You may show it.

Q. They were wintered between here and Idaho—Blackrock, Utah, I mean?

13 A. Blackrock, Utah; yes, sir.

Q. Did I understand you to say part of them were wintered in Idaho?

A. No, sir.

Q. Not any part, but in the vicinity of Blackrock, Utah?

A. Yes, sir.

Q. What county?

A. Millard county.

Q. What time in the spring did you move them from there?

A. We started from there the 20th of January.

Q. What route did you take?

A. I came around through Snake valley by Deep creek.

Q. West of Salt Lake?

A. West of Salt Lake.

Q. Up through the Deep Creek country?

A. Yes, sir.

Q. Whereabouts did you get into the Box Elder country, if you know?

A. Right southeast of Tacoma.

Q. How long were you in driving through Box Elder county?

A. About 25 days.

Q. Did you drive directly through it?

A. As near as I could. We traveled right along.

Q. And you arrived in Idaho, in the county of Cassia?

A. Yes, sir.

Q. And from the county of Cassia drove into the county of Oneida?

A. Yes, sir.

Q. What time did you arrive at the county of Cassia?

A. The first herds arrived there about the 12th of April, on the 12th of April.

Q. On the 12th of April?

A. On the 12th of April, I think.

Q. When did you arrive in the county of Oneida?

A. Some time about the 16th.

Q. Did your sheep have the scab*bies* or scab?

(Objected to as incompetent and immaterial. Objections sustained.)

Mr. BROWN: I offer to show that none of the sheep that he drove into Cassia county had the scab or scab*bies*, that not one of the sheep that he drove into Oneida county had the scab or scab*bies*, or any other disease.

The COURT: I don't think it would make any difference; the objection is sustained.

Defendant excepts to the ruling of the court.

14 Mr. BROWN: I will add that they did not have any indications or hint of having any disease, whatever, at the time they came into Cassia county, or Oneida county.

I suppose this is subject to the same ruling?
The COURT: Yes.
(Exception.)

Q. Did you know, when you entered the county of Cassia, of the existence of this proclamation that has been read here?

(Objected to as incompetent, immaterial, and irrelevant. Objection sustained. Exception.)

Q. Did you know of this proclamation that has been offered in evidence at the time you drove into Oneida county?

(Objected to as incompetent, irrelevant, and immaterial. Same ruling. Exception.)

Q. I asked if you knew it. I will make it stronger, if you had ever heard or been informed anything about it?

(Same objection. Same ruling. Exception.)

Redirect.

By Mr. BAGLEY:

Q. Mr. Rasmussen, you are familiär with the range—that is, the sheep range, through Box Elder county, Utah, into Oneida county, Idaho, are you not?
A. Yes, sir; part of it.
Q. In driving your sheep through Box Elder county and into Oneida county, Idaho, did you drive them over the usual ordinary sheep range and trail?
A. Why, part of the way.
Q. What part of it?
A. Well, different parts: from Oneida, part way we came over the trail; or from Tacoma, rather.
Q. Then you drove your sheep over the same trail and range that other sheep passing from that country into this country, would range?
A. Yes, sir; part of the time.
Q. While they were in Box Elder county they were on that range and trail that had been traveled by other sheep, and was ordinarily traveled by sheep, coming from the winter range into Idaho?
A. Yes, sir; part of the time.

State rests.

The defense now moves for a nonsuit on the following grounds:

1st.

No offense is alleged in the information.

2d.

No offense has been proven by the evidence.

3d.

The governor was not authorized to make any proclamation.

4th.

The event in which the statutes authorizing the governor to make a proclamation, to wit, that he had good reasons to believe that scab or infectious disease had become epidemic in the localities mentioned, is not certified to by him, or proven by any other witness or witnesses.

5th.

There is no proper proof of any proclamation.

6th.

There is no publication of any proclamation shown whatever.

7th.

No proof that any of the sheep were diseased, or that they had any need of being quarantined.

8th.

This is not the proper county in which to bring suit, but the county of Cassia is.

Motion overruled by the court. Defendant excepts.

Defendant rests.

16 Mr. BROWN: I now move for a verdict of the jury and that the court direct the jury to return a verdict, for all the reasons which I named in the motion for nonsuit, just above submitted, a verdict of the jury of acquittal, not guilty, for all the reasons I suggest, I need not repeat.

(Motion denied. Defendant excepts.)

The following instructions were requested by the defendant and refused by the court:

1st. Upon the undisputed facts of this case, the jury should return a verdict of not guilty.

(Refused.)

To which refusal counsel for defendant excepted.

2d. If the jury find that the sheep involved in this case first came into Cassia county from Box Elder, then that is the proper county in which to bring prosecution, and the jury should acquit.

(Refused.)

To which refusal counsel for defendant excepted.

Instructions to the Jury.

The court will instruct the jury that the law in regards to this case is as follows:

Whenever the governor of the State of Idaho has reason to believe that scab or any infectious disease of sheep has become

epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey this disease, he must thereupon, by proclamation, designate such localities and prohibit the importation from there of any sheep into the State, except under such restrictions as, after consultation with the State sheep inspector, he may deem proper. Any person or corporation, who, after publication of such proclamation, receives in charge any such sheep, from any of the prohibited districts, and
17 transports, conveys or drives the same to and within the limits of any of the counties of this State, is punishable by a fine not exceeding $1,000 nor less than $200, and is liable for all damages that may be sustained, by any person by reason of the importation or the transportation of such prohibited sheep. Upon the issuing of such proclamation the owners, or person in charge of any sheep, being shipped into Idaho against which quarantine has been declared, must forthwith notify the deputy inspector of the county into which said sheep may come, of such arrival, and the owner, or person in charge, must not allow any sheep that is quarantined to pass over or upon any public highway, or upon ranges occupied by any other sheep, or within five miles of any corral in which sheep are usually corraled, until such sheep have first been inspected, and any person failing to comply with the provisions of this section *are* punishable, as provided by section 1 of the act, and is liable for all damages sustained by any person by reason of the failure to comply with the provisions of this section.

The court further instructs the jury that if the defendant did, between the 12th day of April and the 20th day of April, 1899, drive, or cause to be driven from the county of Box Elder, Utah, into the county of Oneida, State of Idaho, bands of sheep, being driven from the prohibited sections, embodied in the governor's proclamation, then the defendant is guilty as charged in the information.

The court further instructs the jury that the defendant is presumed to be innocent until proven guilty by the prosecution beyond a reasonable doubt.

You are the sole judges of the evidence that has been introduced in this case, and will be governed by it in making up your verdict.

18 The court further instructs you that under the law the governor had a right to issue the proclamation as stated in the information, and if the defendant violated the provisions of that proclamation he also violated the provisions of the law that I have read to you in this charge.

Ten of you may agree on a verdict.

Defendanant's Exceptions to the Instructions of the Court.

The defendant excepts to the refusal to charge as requested by the defendant in each of his requests.

The defendant excepts to the charge of the court, reading the so-called statute of Idaho, as the law in the case. (Paragraph 1.)

The defendant excepts to the charge that if the defendant drove

into Oneida county bands of sheep, being driven from the county, embodied in the proclamation, that they should find the defendant guilty. (Paragraph 2.)

And the defendant excepts to the charge that the governor had the right to issue the proclamation, which was read in evidence. (Paragraph 3.)

The defendant excepts to the charge that if the defendant violated the proclamation then it was the same as violating the law and they should find him guilty, or in substance about that. (Paragraph 4.)

I hereby certify that the within is a full, true, and correct copy of all the evidence in the above-entitled case.

N. GALLAGHER,
Court Reporter.

19 EXHIBIT TO BILL OF EXCEPTIONS NO. 1.

Proclamation Scheduling Certain Localities on Account of Scab or Scabbies.

STATE OF IDAHO, EXECUTIVE OFFICE.

Whereas, I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among sheep in certain localities or districts, viz: in the county of Cache, State of Utah; the county of Box Elder, State of Utah, and the county of Elko, in the State of Nevada, and, whereas, it is known that sheep from said districts are annually moved, driven or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster. Now, therefore, I, Frank Steunenberg, governor of the State of Idaho, by virtue of authority in me vested, and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving or moving into the State of Idaho of all sheep now being held, herded or ranged, within said infected district, viz: the county of Cache, in the State of Utah; the county of Box Elder, in the State of Utah, and the county of Elko, in the State of Nevada, or which may hereafter be held, herded or ranged within said infected districts, for a period of 60 days from and after the date of this proclamation; after the termination of said 60 days sheep can be moved into this State only upon compliance with all laws of the State of Idaho regarding the inspection and dipping of sheep.

In witness whereof, I have hereunto set my hand and
20 caused to be affixed the great seal of the State. Done at Boise, the capital, this 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] FRANK STEUNENBERG.

By the governor:
M. PATRIE,
Secretary of State.

Assignments of Errors.

The court erred:

1st. In denying the motion to quash.

2d. In overruling the demurrer.

3d. In admitting in evidence the document called "Proclamation of the governor," and overruling the objections of counsel for the defendant thereto.

4th. In sustaining the objection of counsel for the prosecution to question to defendant: "Did your sheep have scab or scabbies?"

5th. In sustaining objections to question to defendant: "Did they (the sheep) have any indication of any disease?"

6th. In sustaining objections of question to defendant: "Did you know when you entered into the county of Cassia with these sheep of the existence of the proclamation which was now read here?"

7th. In sustaining objection to question to defendant: "Did you know of this proclamation that has been offered in evidence at the time you drove into Oneida county?"

8th. In sustaining question to defendant: "Had you ever heard or been informed anything about it (the proclamation)?"

9th. In overruling defendant's motion for nonsuit.

21 10th. In overruling a direction to the jury to find for defendant, upon the reasons named in the motion for nonsuit.

11th. In refusing to charge as — request No. 1.

12th. In refusing to charge as in request No. 2.

13th. In charging the jury in paragraph No. 1, viz: reading the so-called statutes of Idaho as the law in the case.

14th. In charging the jury that if defendant drove into Oneida county bands of sheep, being driven from the prohibited sections embodied in the governor's proclamation, then the defendant is guilty. (Paragraph 2.)

15th. In charging that the governor had the right to issue the proclamation read in evidence. (Paragraph 3.)

16th. In charging that if the defendant violated the proclamation he also violated the provisions of the law. (Paragraph 4.)

ARTHUR BROWN,
S. C. WINTERS,
Attorneys for Defendant.

The foregoing bill of exceptions having been submitted to counsel for the prosecution, and admitted to be correct, it is settled by me, the judge of said court, this 15th day of June, 1899, at the request of counsel for the defendant. The foregoing bill contains all the evidence in said cause.

JOSEPH C. RICH, *Judge.*

STATE OF IDAHO, } ss:
County of Oneida, }

I, D. J. Reynolds, clerk of the district court in the fifth judicial district of the State of Idaho, in and for Oneida county, do hereby

certify that the foregoing transcript contains a full, true and
22 correct copy of the record, notice of appeal and all bills of exception in said action.

Witness my hand and the seal of said court this 9th day of September, 1899.

D. J. REYNOLDS, *Clerk.*

Supreme Court of the State of Idaho.

STATE OF IDAHO, Plaintiff and Respondent,
vs.
R. RASMUSSEN, Defendant and Appellant.

STATE OF UTAH,
County of Salt Lake, } ss:

Arthur Brown, being first duly sworn, says: I was the attorney for the above-named defendant upon the trial in the court below, and I prepared a bill of exceptions and took an appeal therein on or about the 14th day of June, 1899. At that time I gave the clerk directions to immediately prepare a transcript of the entire record and transmit to the clerk of this court, and make arrangements with him to pay him for it when he would know what the amount was. The clerk promised to do it at once. Since that time from time to time I have written asking its performance, and he now tells me that it was his deputy that was there and he has neglected to prepare the transcript on appeal, but he has them now ready. Under the circumstances I ask for an order extending the time within which to file said transcript.

ARTHUR BROWN.

Subscribed and sworn to before me this 5th day of September, 1899.

FRANK C. LEA,
Notary Public.

23 On reading the affidavit of Arthur Brown, counsel for appellant in the above-entitled cause, it is hereby ordered that the time for serving and filing the transcript on appeal herein is hereby extended to and including the 14th day of September, 1899.

Dated September 5, 1899.

JO. WALDO HUSTON,
Chief Justice of Supreme Court.

24 In the Supreme Court of the State of Idaho, January Term, 1900.

Filed January 23d, 1900. Sol. Hasbrouck, Clerk.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.

Syllabus.

An act of the Idaho legislature, establishing quarantine against diseased sheep, etc., passed on March 13, 1899, held not to be in contravention of section 8, article 1, nor section 2, article 4, of the Constitution of the United States.

Appeal from district court of Oneida county, Hon. Joseph C. Rich, district judge. Affirmed.

Arthur Brown, S. C. Winters, & John J. Guheen for appellant; S. H. Hays, attorney general, for State.

25 HUSTON, *C. J.*:

The appellant was convicted of a violation of the provisions of an act of the legislature of Idaho and the proclamation of the governor issued under and in obedience to the command of said statutes; from which judgment this appeal is taken. The said act is as follows:

"SECTION 1. Whenever the governor of the State of Idaho has reason to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey disease, he must thereupon, by proclamation, designate such localities and prohibit the importation from them of any sheep into the State except under such restrictions as, after consultation with the State sheep inspector, he may deem proper.

Any person or corporation who, after publication of such proclamation, receives in charge any such sheep from any of the probibited districts and transports, conveys or drives the same to and within the limits of any of the counties of this State is punishable by fine not exceeding $1,000, nor less than $200, and is liable for all damages that may be sustained by any person by reason of the importation or transportation of such prohibited sheep.

SEC. 2. Upon issuing such proclamation, the owners or persons in charge of any sheep being shipped into Idaho, against which quarantine has been declared, must forthwith notify the deputy inspector of the county into which such sheep first come, of such arrival, and such owner or persons in charge must not allow any sheep so quarantined to pass over or upon any public highway, or upon the ranges occupied by other sheep, or within five miles
26 of any corral in which sheep are usually corralled until such sheep have first been inspected, and any person failing to

comply with the provisions of this section is punishable as provided in section one of this act and is liable for all damages sustained by any person by reason of the failure to comply with the provisions of this section."

On the 12th day of April, 1899, the governor of Idaho, in compliance with the provisions of said act, issued the following proclamation:

STATE OF IDAHO, EXECUTIVE OFFICE.

Whereas I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among sheep in certain localities or districts, viz., in the county of Cache, State of Utah; the county of Box Elder, State of Utah, and the county of Elko, in the State of Nevada; and whereas it is known that sheep from said districts are annually moved, driven, or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster:

Now, therefore, I, Frank Steu-enberg, governor of the State of Idaho, by virtue of authority in me vested and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving, or moving into the State of Idaho of all sheep now being held, herded, or ranged within said infected district, viz, the county of Cache, in the State of Utah; the county of Box Elder, in the State of Utah, and the county of Elko, in the
27 State of Nevada, or which may hereafter be held, herded, or ranged within said infected districts, for a period of 60 days from and after the date of this proclamation. After the termination of said 60 days sheep can be moved into this State only upon compliance with all laws of the State of Idaho regarding the inspection and dipping of sheep.

In witness whereof I have hereunto set my hand and caused to be affixed the great seal of the State.

Done at Boise, the capital, this 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] FRANK STEUNENBERG.

By the governor:
M. PATRIE,
Secretary of State.

While there are some sixteen assignments of error in this case, it is conceded by counsel for appellant that the important question involved is the constitutionality of the act of the legislature of Idaho under which the conviction was had.

It is claimed that this case comes within the reasoning of this court in the case of The State *v.* Duckworth, 51 Pac., 456. In that case the defendant was convicted of a violation of an act of the legislature of Idaho, passed in 1895 and amended in 1897; section 6 of which act provides as follows:

"SECTION 6. Any person, persons, company, corporation or association intending to bring, or cause to be brought from any other State or Territory into any of the counties of the State of Idaho, any sheep, he or they must first notify the deputy sheep inspector of the district or county nearest to the point of entrance into this State that at a fixed date he will be within twenty miles from the State line at a designated point, with said sheep for inspection;
28 and it shall be the duty of the deputy sheep inspector to examine such sheep within three days, and if pronounced sound, to immediately dip such sheep once, and then upon being tendered his compensation as hereinafter provided, issue a permit allowing such sheep to enter this State subject to such regulations as are enforced on resident sheep. But if such sheep are found scabby or infected with any contagious or infectious disease, then the deputy sheep inspector must dip said sheep twice with an interval of from eight to fifteen days between dipping and then issue a permit for said sheep to enter said State under the same regulations as heretofore provided; provided, however, that all sheep must enter said State within three days from final dipping, otherwise permit so issued shall be null and void. And any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction, they shall be punished by a fine of not less than one hundred ($100.00) dollars, nor more than three hundred ($300) dollars, or by imprisonment in the county jail not less than two months nor more than six months or by both such fines and imprisonment; provided, that any person, persons, company, corporation or association bringing or causing to be brought any sheep into any counties of this State in violation of the provisions of this act, shall be fined in addition to the penalty imposed in this section, five cents per head, for every sheep so brought into this State, which shall be a lien on said sheep; and it shall be the duty of the deputy sheep inspector to seize and hold such sheep by such means as he deems best, for a period of ten days, and if said sum is not paid within that period, to advertise and sell said sheep, or as many of the same as may be necessary to satisfy and pay such fine and costs."

And section 14 of the law of 1895 provides as follows:
29 "SEC. 14. It shall be unlawful for any person, persons, company, corporation or association, owning, controlling or managing any ferry-boat, toll bridge, car, steamboat or other things used for transportation, to allow any sheep to be carried thereon, unless the party in charge of said sheep shall first produce a certificate from a deputy sheep inspector appointed under this act, that said sheep are free from scab, scab*bies* or other infectious or contagious disease. Any violation of this section shall be deemed a misdemeanor and punishable by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars."

A comparison of the act of 1897 with that of the act under question will, we think, disclose a greater difference than existed between the law of Missouri held by the Supreme Court of the United States to be invalid in Railroad *vs.* Husen, 95 U. S., 465, and the law of

Kansas, the validity of which was sustained by the same court in Missouri, K. & F. R'y Co. *vs.* Haber, 18 Supreme Court Rep., 488.

The statute under consideration in the case of State *vs.* Duckworth, *supra*, prohibited the introduction into this State in any manner or form, or the transportation through the State in any way or by any means, of any sheep until same had been inspected by a sheep inspector of Idaho, which inspection must be made 20 miles beyond the State line of Idaho, and all sheep must be dipped at least once, and, if found infected, twice before they were allowed to enter the State, and all this to be done by a sheep inspector of Idaho, twenty miles beyond the line of the State. The law of 1899 was intended as a quarantine law. It does not exclude all sheep, but only such as from the fact of their coming from an infected district are liable to import disease. The statute of 1899, under which appel-
30 lant was convicted, is simply a quarantine law, nothing more, nothing less. We do not understand that it is, or ever was, an essential to the enforcement of a quarantine that the fact of the existence of the disease in the subject of the quarantine should be primarily established. As we understand, it is a preventive measure. It will hardly be claimed, we apprehend, that the State has not the power to prevent, by legislative enactment, the introduction within its boundaries of diseased animals, and this is all that the act under consideration purports or is intended to accomplish.

The chief of the Bureau of Animal Industry, in his report to the Secretary of Agriculture dated March 15, 1898, says: "In the United States some sections have been overrun with sheep scab, and many persons engaged in the sheep industry have been forced to forsake it because of their losses from this disease. It is probable that in its destruction of invested capital sheep scab is second only to hog cholera among our animal diseases. The large flocks of the Plains and Rocky Mountain region and the feeding stations further east have suffered severely, and are constantly sending diseased animals to the great stock yards of this country." The same officer states in his letter transmitting his report to the Secretary of Agriculture: "The disease known as scab is one of the most serious drawbacks to the sheep industry, and results in enormous financial losses. Yet despite its insidious nature, its ease of transmission, its severe effects, and its prevalence in certain localities, it is a disease which yields readily to proper treatment." That the length of time of quarantine fixed by the Idaho statute is not excessive is, we think, shown by the rules laid down by the authority already
31 cited: "(1.) Scabby sheep should never be driven upon a public road. (2.) Sheds in which scabby sheep have been kept should be thoroughly cleaned, disinfected, and aired, and should be left unused for at least four weeks, better two months, before clean sheep are placed in them. (3.) Fields in which scabby sheep have been kept should stand vacant at least four weeks (better six or eight) before being used for clean sheep. (4.) A drenching rain will frequently serve to disinfect a pasture, but it is well to whitewash the posts against which scabby sheep have rubbed.

Even after observing the precautions here given it is not possible to absolutely guarantee that there will be no re-infection, but the probabilities are against it."

Report of chief of Bureau of Animal Industry, 1898, with this author-ative statement before them, the legislature of Idaho enacted the law under consideration. That under the conditions established and recognized some legislation was necessary for the effective prevention of the spread of this disease among the sheep of this State must be conceded, and we are clearly of the opinion that that adopted by the legislature was the most effective and the least objectionable that could have been adopted.

Counsel for appellant speaks somewhat contemptuously of these reports of the Bureau of Animal Industry to the Secretary of Agriculture of the United States, but we notice they are cited as authority by the Supreme Court of the United States in Kimmish *v.* Bail, 9 Supreme Court Reports, 277. The Supreme Court in the last-mentioned case, in drawing the distinction between it and the case of Railroad Co. *vs.* Husen, 95 U. S., 465, says: "The decision in that case (Railroad Co. *v.* Husen) rested upon the ground that no discrimination was made by the law of Missouri in the transportation forbidden between sound cattle and diseased, and this circumstance is prominently put forth in the opinion."

32 The same distinction appears between the Idaho law of 1895 and 1897 and the law of 1899. The law of 1895 and 1897 prohibited the bringing into the State of any sheep until the same had been inspected and treated by an Idaho sheep inspector twenty miles beyond the State line. The law of 1899 and the proclamation of the governor thereunder quarantines sheep coming from an infected district or locality before permitting them to be driven into this State.

Our legislature, in rightful recognition of the large and constantly increasing importance of the sheep industry as one of the most important elements of the wealth and resources of the State have enacted most stringent and comprehensive laws for the protection of those animals from disease. But what avails the enactment or the enforcement of laws for the protection of sheep within the State, if we are to be constantly subject to an invasion of sheep from the infected districts of adjoining States or counties, and we do not think that a law made simply and solely for the protection of the sheep of this State from infection by the introduction into the State of sheep from a known infected district can in any way be said to interfere with commerce between the States or abridge the rights of citizens of other States within this State. The law only required persons who desire to drive sheep into this State from known infected districts to be subject to the same rules and regulations for the prevention and cure of disease among their sheep so sought to be driven into this State as is required of our own citizens.

The Supreme Court of the United States in Missouri, K. & T. R'y Co. *v.* Haber, 18 Sup. Court Reporter, 488, which is, we believe, the

latest expression of that court upon this question, says:
33 "Neither corporations nor individuals are entitled, by force alone of the Constitution of the United States and without liability for injuries resulting therefrom to others, to bring into one State from another State cattle liable to import or capable of communicating disease to domestic cattle. The contrary cannot be affirmed under any sound interpretation of the Constitution. This court, while sustaining the power of the Congress to regulate commerce among the States, has steadily adhered to the principle that the States possess because they have never surrendered the power to protect the public health, the public morals, and the public safety by any legislation appropriate to that end which does not encroach upon rights guarantied by the National Constitution, nor come in conflict with the acts of Congress passed in pursuance of that instrument. Although the powers of a State must in their exercise give way to a power exerted by Congress under the Constitution, it has never been adjudged that that instrument, by its own force, gives any one the right to introduce into a State, against its will, cattle so affected with disease that their presence in the State will be dangerous to domestic cattle." We can see but little difference in principle between the case of Missouri, K. & T. R'y Co. *vs.* Haber and the case under consideration.

The Kansas statute under consideration in that case made any person or persons bringing into that State any cattle liable or capable of communicating Texas splenic or Spanish fever to any domestic cattle of that State liable for all damages that might be sustained by reason of the communication of said disease. "Proof that the cattle which such person or persons are charged with shipping, driving or keeping or which are claimed to have com-
34 municated the said disease were brought into this State from south of the thirty-seventh parallel of north latitude, shall be taken as *prima facie* evidence that such cattle were between the first day of February and the first day of December of the year in which the offense was committed, capable of communicating and liable to import Texas splenic or Spanish fever within the meaning of this act, and that the owner or owners, person or persons in charge of such cattle had full knowledge and notice thereof;" and this statute was upheld by the United States Supreme Court against a contention predicated upon the same lines contended for by the appellant in this case, to wit, the limit of the power of the State in the matter of public regulations.

The contention of appellant that because it was not shown that any of the sheep driven by him into this State were diseased, or that he was not permitted, although ready to prove that none of said sheep were diseased, cannot be entertained. The appellant himself testified that he had the sheep in Box Elder county, Utah, which is designated in the proclamation of the governor as one of the infected districts, and against which quarantine had been declared for the period of twenty-five days. The fact that these sheep came directly from an infected district was sufficient to establish their capability and liability to communicate disease.

The authorities upon the disease known as "sheep scab" say that it may be communicated by contact of one sheep with another or indirectly from tags of wool or from fences, posts, etc., against which scabby sheep have rubbed, or from the places where the sheep have been "bedded down." See report of chief of Bureau of Animal Industry, 1898. What protection, then, have the sheep-growers of Idaho without the aid of just such preventive laws as that under consideration?

35 We have examined and considered the various assignments of error set out in appellant's brief, and we do not think that any of them present reversible error. Appellant claims that the venue is not properly laid. We do not think this contention can obtain. The bringing into any county of the State sheep from the proscribed districts is an offence, and prosecution therefor may be instituted in any county where the sheep are found. We do not think the act delegates to the governor legislative power. It simply requires him to act when he ascertains that certain conditions exist. This is not a delegation of legislative power, as we understand it. Having ascertained, through entirely proper and legitimate methods, the existence of the exigency which under the law required him to act, he did so. He could not have done otherwise without being obnoxious to the charge of dereliction in official duty. The claim that the law discriminates against the citizens of Utah is entirely unsupported. We think most, if not all, of the other questions raised in the assignment of errors have been disposed of in this opinion. The judgment of the district court is affirmed, with costs to respondent.

Quarles, J., and Sullivan, J., concur.

36 STATE OF IDAHO, *ss:*

Supreme Court.

BOISE, IDAHO, *Oct.* 13, 1899.

Court met pursuant to adjournment—present, Hon. Joseph W. Huston, chief justice; Hon. Ralph P. Quarles, justice, and the officers of the court—when the following (among other) proceedings were had, to wit:

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } No. 577.

Ordered that the attorney general be, and he is hereby, granted until the first day of the November, 1899, term within which to serve and file a brief in the above-entitled cause.

STATE OF IDAHO, *ss:*

Supreme Court.

BOISE, IDAHO, *Dec.* 5, 1899.

Court met pursuant to adjournment—present, Hon. Joseph W. Huston, chief justice; Hon. Ralph P. Quarles, justice; Hon. Isaac

N. Sullivan, justice, and the officers of the court—when the following (among other) prodeedings were had, to wit:

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } No. 577.

It is ordered that this cause be, and the same hereby is, continued for the term.

37 Same Title of Court and Cause.

JAN. 10, 1900.

This cause having been heretofore set for hearing on this day, the same was called. Arthur Brown appeared for appellant and Attorney General S. H. Hays for the State. After argument by respective counsel, the court ordered the cause taken under advisement.

Same Title of Court and Cause.

JANUARY 24, 1900.

This cause having been heretofore submitted and taken under advisement by the court, and the court having fully considered the same, now, on this day, the cause was again called, and the decision of the court is delivered by Chief Justice Huston, to the effect that the judgment of the court below be affirmed.

It is therefore considered, adjudged, and decreed by the court that the judgment of the district court of the fifth judicial district in and for the county of Oneida in the above-entitled cause be, and the same hereby is, affirmed.

Costs awarded to the respondent.

38 In the Supreme Court of the State of Idaho.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant. } Petition for Writ of Error.

Now come the said defendant and says that in the final judgment rendered by the supreme court of the State of Idaho on the twenty-fourth day of January, 1900, and in the proceedings had thereto certain errors were committed, to the prejudice of said defendant, which will more in detail appear from the assignments of error to be filed as a part of this petition; and petitioner further shows that in the final judgment and decree of the fifth judicial district court of the State of Idaho in and for Oneida county and in the final judgment of the supreme court of the State of Idaho a decision was had and made in said cause where was drawn in question the validity of a statute of the State of Idaho on the ground of its being repugnant to the Constitution of the United States, to wit: It was repugnant to section 8, article 1, of the Constitution of the United States, and repugnant to section 2, article 4, of the Constitution of the United States; that the defendant in this cause was arrested, tried, and con-

victed in the said district court of the fifth judicial district of Idaho of an alleged offence, stated in the indictment, for driving sheep from the county of Box Elder, State of Utah, into the county of Oneida, State of Idaho, between the 12th day of April, 1899, and the 20th day of April, 1899, against and in violation of a proclamation of the governor of the State of Idaho issued and published on the 12th day of April, 1899; that on the trial of said cause it was
39 claimed that the said defendant had violated a statute of Idaho, which reads as follows:

"Whenever the governor of the State of Idaho has reason to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation, designate such localities and prohibit the importation from them of any sheep into the State, except under such restrictions as, after consultation with the State sheep inspector, he may deem proper," and of a proclamation issued thereunder, a copy of which is hereto annexed and made a part hereof. Your petitioner further shows that on the trial of said cause your petitioner, by his counsel, set up and claimed that the said act of the legislature of Idaho and the said proclamation of the governor of Idaho were repugnant to the Constitution of the United States, in that they were repugnant to the clauses above named, to wit, section 8, article 2, of the Constitution of the United States, and section 2, article 4, of the Constitution of the United States, and the validity of the said acts *were* drawn in question during said trial; that such proceedings were had after the conviction of the said defendant that the said cause was appealed to the supreme court of the State of Idaho, and in the supreme court of Idaho the validity of the said acts of the legislature and the governor *were* drawn in question as being contrary to the Constitution of the United States in the sections named; that upon the trial of said cause in the district court the trial court held that the said acts of the legislature and the governor were valid and not contrary to the Constitution of the United States, and the supreme court of the State of Idaho held upon the appeal thereto from the said conviction that the said acts of the legislature and the governor were valid and held in favor of their validity.

40 Wherefore this defendant prays that a writ of error may be issued in his behalf from the supreme court of the State of Idaho for the correction of the errors so complained of, and that the transcript, papers, and records in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

ARTHUR BROWN,
HENRY P. HENDERSON,
Attorneys for Defendant.

41 *Proclamation Scheduling Certain Localities on Account of Scab or Scabbies.*

STATE OF IDAHO,
EXECUTIVE OFFICE.

Whereas I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among the sheep in certain localities or districts, viz., in the county — Cache, State of Utah; the county of Box Elder, State of Utah, and the county of Elko, in the State of Nevada and whereas it is known that sheep from said districts are annually moved, driven, or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster:

Now, therefore, I, Frank Steunenberg, governor of the State of Idaho, by virtue of authority in me vested and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving, or moving into the State of Idaho of all sheep now being held, herded, or ranged within the said infected district, viz., the county of Cache, in the State of Utah; the county of Box Elder, in the State of Utah, and the county of Elko, in the State of Nevada, or which may hereafter be held, herded, or ranged within said infected districts for a period of 60 days from and after the date of this proclamation; after the termination of said 60 days sheep can be moved into this State only upon compliance with all the laws of the State of Idaho regarding the inspection and dipping of sheep.

In witness whereof I have hereunto set my hand and cause to be affixed the great seal of the State.

Done at Boisé, the capital, this 12th day of April, in the
42 year of our Lord, one thousand eight hundred and ninety-nine.

[SEAL.] FRANK STEUNENBERG.

By the governor:
M. PATRIE,
Secretary of State.

Filed February 16th, 1900.

SOL. HASBROUCK, *Clerk.*

43 In the Supreme Court of the United States.

R. RASMUSSEN, Plaintiff in Error,
vs.
THE STATE OF IDAHO, Defendant in Error. } Assignment of Errors.

Now comes the above-named plaintiff in error, by Arthur Brown and Henry P. Henderson, his attorneys, and says that in the record

and proceedings in the above-entitled cause there is manifest error, in this, to wit:

1. That the supreme court of the State of Idaho erred in sustaining the validity of the act of the legislature of the State of Idaho, Session Laws 1899, page 452, as fully set forth in the record and briefs in this cause.

2. The supreme court of the State of Idaho erred in sustaining the validity and power of the proclamation of the governor excluding certain sheep from the State of Idaho on the ground of scabbies.

3. The supreme court of the State of Idaho erred in holding that the act of the legislature of the State of Idaho, Session Laws 1899, page 452, and the proclamation of the governor thereunder *was* not in violation of section 8, article 1, of the Constitution of the United States.

4. The supreme court of the State of Idaho erred in holding that the act of the legislature, Session Laws 1899, page 452, and the proclamation thereunder *was* not in violation of section 2, article 4, of the Constitution of the United States.

5. The supreme court of Idaho erred in sustaining the trial court in each of the following particulars in which the trial court erred, and the plaintiff in error herein assigns as error each of the following assignments made in the supreme court of the State of Idaho to the ruling of the *the* trial court.

The court erred:

44 1st. In denying the motion to quash.

2d. In overruling the demurrer.

3d. In admitting in evidence the document called "Proclamation of the governor," and overruling the objection of counsel for the defendant thereto.

4th. In sustaining the objection of counsel for the prosecution to question to defendant: "Did your sheep have scab or scabbies?"

5th. In sustaining objection to question to defendant: "Did they (the sheep) have any indication of any disease?"

6th. In sustaining objection to question to defendant: "Did you know of this proclamation that has been offered in evidence at the time you drove into Oneida county?"

7th. In sustaining question to defendant: "Had you ever heard or been informed anything about it (the proclamation)?"

8th. In overruling defendant's motion for nonsuit.

9th. In overruling a direction to the jury to find for defendant upon the reasons named in the motion for nonsuit.

10th. In refusing to charge as request No. 1.

11th. In charging the jury in paragraph No. 1, viz., reading the so-called statutes of Idaho as the law in the case.

12th. In charging the jury that if defendant drove into Oneida county bands of sheep, being driven from the prohibited section embodied in the governor's proclamation, then the defendant is guilty. (Paragraph 2.)

13th. In charging that the governor had the right to issue the proclamation read in evidence. (Paragraph 3.)

14th. In charging that if the defendant violated the proclamation he also violated the provisions of law. (Paragraph 4.)

ARTHUR BROWN,
HENRY P. HENDERSON,
Attorneys for Pl'ff in Error.

Filed Feb. 16th, 1900.
SOL. HASBROUCK, *Clerk.*

45 In the Supreme Court of the State of Idaho.

STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.
} Allowance of Writ of Error.

On the twelfth day of February, 1900, came the said defendant, by his attorney, Arthur Brown, and filed and presented herein a petition praying for the allowance of a writ of error intended to be urged by the defendant, praying also that the transcript of the records and proceedings and papers upon which the judgment herein was rendered and duly authenticated may be sent to the Supreme Court of the United States, and that such full and further proceedings may be had as may be proper in the premises.

In consideration thereof I, Joseph W. Huston, chief justice of the supreme court of the State of Idaho, do hereby allow the writ of error upon the defendant's giving bond according to law in the sum of five hundred dollars, which shall operate as a supersedeas bond, and bail, pending proceedings on writ of error to the Supreme Court of the United States.

JOSEPH W. HUSTON,
Chief Justice.

Filed Feb. 16, 1900.
SOL. HASBROUCK, *Clerk.*

46 In the Supreme Court of the United States.

R. RASMUSSEN, Plaintiff in Error,
vs.
THE STATE OF IDAHO, Defendant in Error.
} Citation.

The United States of America to the State of Idaho, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, within thirty days from the date of this citation, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Idaho, at Boise, Idaho, wherein R. Rasmussen is plaintiff in error and The State of Idaho is defendant in error, to show cause, if any there be, why a judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court of the United States, this 12th day of February, in the year of our Lord one thousand nine hundred.

JOSEPH W. HUSTON,
Chief Justice Supreme Court of Idaho.

Attest: —— ——.

Due service of the foregoing citation by copy personally served and of annexed petition in error, allowance and assignment in error is hereby admitted this 16th day of February, 1900.

SAMUEL H. HAYS,
Att'y Gen'l.

Filed Feb. 16th, 1900.
SOL. HASBROUCK, *Clerk.*

47 In the Supreme Court of the State of Idaho.

THE STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.

Know all men by these presents that we, R. Rasmussen, as principal, and the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, duly authorized by its charter to become sole surety upon bonds as surety, are held and firmly bound unto the State of Idaho in the full and just sum of five hundred ($500.00) dollars, to be paid to the said State of Idaho, its certain attorneys and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated this 14th day of February, A. D. 1900.

Whereas lately, in the supreme court of the State of Idaho, in a suit pending in the said court between said defendant, R. Rasmussen, and The State of Idaho, plaintiff, a judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment of the aforesaid suit, and a citation directed to the said State of Idaho, citing and admonishing it to be and appear in the Supreme Court of the United States, to be holden at Washington, in the District of Columbia:

Now, the condition of the above obligation is such that if
48 the — R. Rasmussen shall prosecute said writ of error to effect, and, if he fails to make said plea good, answer all costs, and will appear in the district court of the fifth district of the State of Idaho in and for the county of Oneida, and will at all times render himself amenable to its orders and process and appear for judgment and surrender himself in execution thereof, then the above obligation to be void; else to remain in full force and virtue.

In witness whereof the said R. Rasmussen has subscribed his name and the Fidelity and Deposit Company of Maryland has

caused this bond to be executed in its corporate name, attested with its corporate seal, by its local director, pursuant to a resolution of the board of directors of the Fidelity and Deposit Company of Maryland duly passed and adopted Apr. 5th, 1899.

R. RASMUSSEN,
By ARTHUR BROWN, *Att'y.*

Witness:

——— ———.

[CORPORATE SEAL.] FIDELITY & DEPOSIT CO. OF MD.,
By M. S. PENDERGAST,
Member Local Board of Directors.

Attest: R. B. WHITTEMORE, *Gen'l Ag't.*

STATE OF UTAH, }
County of Salt Lake, } *ss:*

M. S. Pendergast, being first duly sworn, deposes and says:
I am a member of the local board of directors of the Fidelity and Deposit Company of Maryland, the surety on the foregoing bond; that said surety company is a corporation organized under the laws of the State of Maryland, and said corporation has a paid-up capital stock of $1,500,000 and a surplus fund of $1,500,000.

M. S. PENDERGAST.

Subscribed and sworn to before me this 14th day of Feb., A. D. 1900.

[SEAL.] R. B. WHITTEMORE,
Notary Public.

49 In the Supreme Court of the State of Idaho.

THE STATE OF IDAHO, Respondent, }
vs.
R. RASMUSSEN, Appellant. }

On reading the foregoing bond executed in behalf of the said defendant, as principal, and by the Fidelity and Deposit Company of Maryland, as surety, the same is hereby accepted as sufficient bond on appeal and the same is approved by me and is accepted as a recognizance and bail for the said defendant during the hearing of said cause in the supreme court.

JO. WALDO HUSTON,
Chief Justice Sup. Ct. of Idaho.

50 In the Supreme Court of the State of Idaho.

THE STATE OF IDAHO, Respondent,
vs.
R. RASMUSSEN, Appellant.

STATE OF IDAHO, }
County of Ada, } *ss:*

Sherman G. King, being duly sworn, says: I am the agent of the Fidelity and Deposit Company of Maryland, organized for the purpose of becoming surety in proper cases; that said company has filed due proof with the secretary of state of the State of Idaho that it possesses the qualifications under the act of the legislature, Laws of 1899, page 337, providing for companies being sureties on recognizances and bonds, and has received a certificate from the said secretary of state setting forth that said company has qualified and is authorized to do business under said act; that said proof was filed less than one year ago and *and* said certificate is in full force and effect.

SHERMAN G. KING.

Subscribed and sworn to before me this 19 day of February, 1900.

[SEAL.] WALTER S. WALKER,
Notary Public.

Filed Feb. 19th, 1900.
SOL. HASBROUCK, *Clerk.*

51 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Idaho, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a suit which is in the said supreme court of the State of Idaho, before you, being the highest court of law or equity of said State in which a decision could be had in said State between The State of Idaho, plaintiff, and R. Rasmussen, defendant, wherein was drawn in question the validity of an act of the legislature of the State of Idaho and of the governor thereof, to wit, the validity of the statute of the State of Idaho of Session Laws 1899, page 452, and the proclamation issued in pursuance thereof on the 12th day of April, 1899, and whereas the decision was in favor of the validity of said act of the legislature, and manifest error has happened, to the great injury and damage of the said defendant, R. Rasmussen, as by the petition for writ appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then and under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at

Washington within sixty days of the date hereof, and that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 15th day of February, A. D. 1900.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON,
Clerk United States Circuit Court
of North Circuit, District of Idaho.

Allowed by—
JOSEPH W. HUSTON,
Chief Justice of the State of Idaho.

52 In the Supreme Court of the United States.

R. RASMUSSEN, Plaintiff in Error,
vs.
THE STATE OF IDAHO, Defendant in Error.

UNITED STATES OF AMERICA,
State of Idaho, } *ss:*

I, Sol. Hasbrouck, clerk of the supreme court of the State of Idaho, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing 53 pages, numbered from 1 to 53, inclusive, contain a full, true, and complete transcript of the record and proceedings had in said court in the case of R. Rasmussen, plaintiff in error, against The State of Idaho, defendant in error, as the same remain of record and on file in said cause. I further certify that at the time the said writ of error was filed in the office of the clerk of said court the plaintiff in error lodged with me, as clerk of said supreme court, in said office, a copy of said writ of error.

Witness my hand and the seal of said supreme court this 20 day of February, A. D. 1900.

[Seal of Supreme Court, State of Idaho.]

SOL. HASBROUCK, *Clerk.*

Endorsed on cover: File No., 17,658. Idaho supreme court. Term No., 544. R. Rasmussen, plaintiff in error, *vs.* The State of Idaho. Filed February 28th, 1900.

FEB 4 1

OCTOBER TERM, 1900.

Filed Feb. 4, 1901.

C. RASMUSSEN, PLAINTIFF IN ERROR,

vs.

THE STATE OF IDAHO.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

NO. 215.

R. RASMUSSEN, PLAINTIFF IN ERROR,

VS.

THE STATE OF IDAHO.

In Error to the Supreme Court of the State of Idaho.

STATEMENT OF FACTS.

The defendant was convicted in the District Court of Oneida County, Idaho, of driving sheep from Box Elder County, Utah, into the State of Idaho on the 12th day of April, 1899. The information alleges that this act was contrary to the proclamation of the Governor. The last legislature passed an act providing:

Session Laws, 1899, page 452, Section 1:

> "Whenever the Governor of the State of Idaho has reason to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation, designate such localities and prohibit

the importation from them of any sheep into the State, except under such restrictions as, after consultation with the State Sheep Inspector, he may deem proper."

In pursuance of this authority it is claimed that on the 12th day of April, 1899, the Governor issued a proclamation as follows:

PROCLAMATION.

Scheduling certain Localities on account of Scab or Scabbies.

STATE OF IDAHO,
Executive Office.

Whereas, I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among sheep in certain localities or districts, viz: in the County of Cache, State of Utah; the County of Box Elder, in the State of Utah; and the County of Elko, in the State of Nevada; and

Whereas, it is known that sheep from said districts are annually moved, driven or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster.

Now, therefore, I, Frank Steunenberg, Governor of the State of Idaho, by virtue of authority in me vested, and after due consultation with the State Sheep Inspector, do hereby prohibit the importation, driving or moving into the State of Idaho of all sheep now being held, herded or ranged within said infected districts, viz: the County of Cache, in the State of Utah; the County of Box Elder, in the State of Utah; and the County of Elko, in the State of Nevada, or which may hereafter be held, herded or ranged

within said infected district, for a period of sixty days from and after date of this proclamation; after the termination of said sixty days sheep can be moved into this State only upon compliance with the laws of the State of Idaho regarding the inspection and dipping of sheep.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State. Done at Boise, the Capital, this 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

(Seal.) FRANK STEUNENBERG.

By the Governor.

M. PATRIE,

Secretary of State.

This defendant was called as a witness and testified to the facts and he swore that he drove sheep from the southern part of Utah into and through the county of Box Elder, in Utah, and into the county of Cassia, Idaho, and from thence into the county of Oneida where he was arrested. The defendant offered to show that the sheep that he had thus driven were perfectly healthy and had no need of any quarantine.

A question was asked defendant if his sheep had the scab or scabbies, which was objected to and the objection was sustained (Record p. 10) and then counsel for defendant offered to show that the sheep did not have any indication or hint of any disease whatever at the time they were brought into the State of Idaho. On this state of facts the defendant contends:

1st. That the act of the legislature, taken together with the proclamation of the Governor, as part of it is unconstitutional and contrary to that clause of the Constitution of the United States, Section 8, Article 1, which authorizes Congress to regulate commerce between the states.

2nd. That the legislation and proclamation of the Governor is contrary to the clause of the Constitution which prevents the states from legislating against property of citizens of other states. Section 2, Article 4.

The assignments of error are made specific to particular rulings of the trial court and of the Supreme Court, but they all relate to the contention above stated:

ASSIGNMENTS OF ERROR.

1. That the Supreme Court of the State of Idaho erred in sustaining the validity of the act of the legislature of the State of Idaho, Session Laws 1899, page 452, as fully set forth in the records and briefs in this cause.

2. The Supreme Court of the State of Idaho erred in sustaining the validity and power of the proclamation of the Governor excluding certain sheep from the State of Idaho on the ground of scabbies.

3. The Supreme Court of the State of Idaho erred in holding that the act of the legislature of the State of Idaho, Session Laws 1899, page 452, and the proclamation of the Governor thereunder was not in violation of Section 8, Article 1, of the Constitution of the United States.

4. The Supreme Court of the States of Idaho erred in holding that the act of the legislature, session laws 1899, page, 452, and the proclamation thereunder was not in viotion of Section 2, Article 4, of the Constitution of the United States.

5. The Supreme Court of Idaho erred in sustaining the trial court in each of the following particulars in which the trial court erred, and the plaintiff in error herein assigns as error each of the following assignments made in the Supreme Court of the State of Idaho to the ruling of the trial court.

The court erred:

1st. In denying the motion to quash.

2nd. In overruling the demurrer.

3rd. In admitting in evidence the document called "Proclamation of the Governor," and overruling the objection of counsel for the defendant thereto.

4th. In sustaining the objection of counsel for the prosecution to question to defendant: "Did your sheep have scab or scabbies?"

5th. In sustaining objection to question to defendant: "Did they (the sheep) have any indication of any disease?"

6th. In sustaining objection to question to defendant: "Did you know of this proclamation that has been offered in evidence at the time you drove into Oneida County?"

7th. In sustaining objection to question to defendant: "Had you ever heard or been informed anything about it (the proclamation)?

8th. In overruling defendant's motion for nonsuit.

9th. In overruling a direction to the jury to find for defendant upon the reasons named in the motion for nonsuit.

10th. In refusing to charge as request No. 1.

11th. In charging the jury in paragraph No. 1. viz.: reading the so-called statutes of Idaho as the law in the case.

12th. In charging the jury that if defendant drove into Oneida County bands of sheep, being driven from the prohibited section embodied in the governor's proclamation, then the defendant is guilty. (Paragraph 2.)

13th. In charging that the governor had the right to issue the proclamation read in evidence. (Paragraph 3.)

14th. In charging that if defendant violated the proclamation he also violated the provisions of law. (Paragraph 4.)

BRIEF.

The plaintiff in error claims that this court has already determined the principles which govern this case in the two cases of Railway Company against Husen, 95 U. S. 465, and Missouri, Kansas & Texas Railway vs. Haber, 169 U. S. 613. The question of the method of dealing with diseased cattle and sheep and of dealing with cattle and sheep in transportation to prevent disease has been a much vexed one. We have nothing to add to the discussion which has already been so fully had in the cases above quoted. A distinction might be drawn between Texas Fever in cattle and scabbies in sheep in this: All sheep in all parts of this country are liable to scabbies; it is a prevalent disease, or rather than a disease a difficulty in raising sheep. There are healthy sheep yet it seems as if the scab was almost a necessary incident in their handling. It has never been eradicated and perhaps never can be. The Texas Fever is local in its character and confined to a small part of the country and more easily stamped out. The general principles of law applicable to them however are the same. Healthy sheep and healthy cattle, whether they come from Texas or Utah have a right to be shipped all over this United States. No state can prevent by any kind of legislation, direct or indirect, the commerce between the states in healthy stock. No state can be proscribed so that its stock shall not have all the benefits of all other states.

In Railway Company against Husen, *supra*, the law was declared unconstitutional because of the very defect which we here claim, viz: that there was no distinction between healthy and unhealthy stock, all were alike to be excluded for a period long enough to prevent the disease from being introduced into the state. No case holds and

no principle permits exclusion of healthy sheep. The sheep in this case were proven or attempted to be proven healthy and had not any sign or sympton of disease. The sin of these sheep in our case was that they had been driven from Utah and that it was the spring of the year.

Reliance was made upon the second case quoted, Railway Company against Haber, but that statute was sustained solely on the ground that it was a rule of evidence. It was competent to provide that the burden of proof should be changed; that a *prima facie* case of disease was made from the fact that the cattle came from diseased country, but the owner was permitted to rebut the presumption to show that they were healthy; the very thing which we offered to show and which is excluded by the Idaho statute and proclamation. The following quotation from the last named case containing also a part of Railway Company vs. Husen we submit as sufficient argument to cover the entire ground.

> "Tried by this rule, the statute of Missouri is a plain intrusion upon the exclusive domain of Congress. It is not a quarantine law. It is not an inspection law. It says to all natural persons and to all transportation companies, you shall not bring into the State any Texas cattle or any Mexican cattle, or Indian cattle between March 1st and December 1st in any year, no matter whether they are free from disease or not, no matter whether they may do an injury to the inhabitants of the State or not; and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities. Such a statute, we do not doubt, is beyond the power of a State to enact. To hold otherwise would be to ignore one of the leading objects which the Constitution of the United States was designed to secure."

"The decision in that case was placed distinctly on the ground that although the State could prevent persons and animals suffering under contagious or infection diseases, or convicts, etc., from entering the State, it could not under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce, and the Missouri statute was held to be unconstitutional because it went beyond the necessities of the case, having been so drawn as to exclude all Texas, Mexican or Indian cattle from the State, (except cattle to be transported across and out of the State,) whether free from disease or not, or whether they would or would not do injury to the inhabitants of the State.

"No such criticism can be made of the statute of Kansas. It does not prohibit the bringing into the State of *all* Texas cattle. It does not in any true sense prohibit or burden any commerce among the States specifically authorized by Congress; but, for purpose of self-protection only and in the exercise of its inherent power to protect the property of its people declared that any corporation or person bringing into the State or driving into or through any county of the State cattle liable to impart or capable of communicating Texas, splenic or Spanish fever to domestic cattle should be responsible in damages to anyone to whose cattle that disease was communicated by the cattle so brought into the State."

In the Kansas Statute reported there it will be seen that there is no attempt of excluding all classes of cattle or of excluding any healthy cattle at all, only a method of determining whether cattle were healthy or unhealthy. A distinction between the Kansas statute and the Idaho statute, with the Governor's proclamation added as a combination, is made prominent by the offer of defendant to show that the sheep were free from disease. The Kan-

sas statute provided a rule of evidence that if the defendant had offered to show under that rule of evidence that the cattle were healthy they were to be received into the State of Kansas. Healthy cattle could not be excluded from Kansas, healthy sheep cannot be excluded from Idaho.

The same reasoning is found in the case of Henderson vs. Mayor, 92 U. S. 259.

There are two cases in the State of Idaho which bear directly upon this question and upon another statute not so objectional as this which was held unconstitutional. We refer to the case of State of Idaho vs. Duckworth, 51 Pac. 456 and Territory against Evans, 2 Idaho, 634.

A few words might be said about the obvious intent of this statute and the bad faith in which this proclamation was issued. It is not a statute of quarantine in any sense. There is no inspection of sheep required or made. It does not attempt to place the sheep in any position where they can be held for a period of time before they enter into the State, it is simply an embargo for a period of sixty days. If the counties of Utah were infected with scab no reason is given why they should be admitted any time in the year any more than during the sixty days mentioned in the proclamation. There are some surroundings connected with this case of which the courts below would take judicial notice and of course this court takes the same notice of it. Sheep are ranged in Idaho and Utah on the public domain. The western part of Utah is a large desert where no stock of any kind remain in the summer because there is no water there, but various shrubs grow there which can be eaten by sheep when snow is on the ground. The only uses to which it can be at present put is that of grazing sheep upon it in winter. These sheep must be taken in

the summer to the mountains where there is water and shade; hence every spring sheep are being driven from these deserts of western Utah to the mountains in the eastern part of Utah and north to the mountains of Idaho. Their owners have a right to utilize the grasses upon the public domain; the State of Idaho cannot directly or indirectly, exclude sheep of citizens of other states from grazing upon the lands of the United States in the State of Idaho. It is apparent when we consider the situation what the purpose of this proclamation is. While it does in no manner attempt to cure the scab or prevent scab or quarantine against scab the whole scheme is to prevent Utah sheep from grazing on the mountains of Idaho.

Reliance was had in the argument of the Supreme Court of Idaho upon certain opinions of certain writers for the Agricultural Department of the United States. All these opinions are but theories. Different pamphlets are found contradicting each other. The Supreme Court of Idaho overruled the decision of this court in the case of Railway Co. against Husen upon the supposition that some writer in the Agricultural Department had determined that the decision of the Supreme of the United States should be overturned by his edict. It makes no difference whether it takes six or sixty days to secure scab or a year and sixty days; healthy sheep have a right to be driven from one state to the other and to graze upon the public domain wherever it exists. The courts will not permit any regulation ostensibly or under the guise of providing for the health of stock or men to prevent or hamper the introduction of property into other states. These fictitious pretenses creating difficulties cannot make this law constitutional. It is an attempt to interfere with interstate commerce.

In Re Rebman, 41 Fed. 868.
Brimer vs. Rebman, 138 U. S. 78.
Voight vs. Wright, 141 U. S. 62.
Minnesota vs. Barber, 136 U. S. 313.
Chy. Lung vs. Freeman, 92 U. S. 275.

Even the introduction of intoxicating liquor in its original packages cannot be regulated by state legislation unless authorized by the Statutes of the United States.

Leisy vs. Hardin, 135 U. S. 100.
1 Supp. Rev. Stat. of the U. S., page 779.
Vance vs. Vandercook, 170 U. S. 444-445.

There is no proof in this case or finding in the proclamation or statement in the pamphlet from the Agricultural Department that the disease of scab is any worse or different in the spring of the year than at any other season. Two months in the spring sheep are prohibited from entering Idaho. Why not the next two months and the rest of the year? If the Governor can prohibit for two months he can prohibit for ever; if in the spring of 1899 in each occurring spring. As a matter of illustration since this suit has been in court, in the spring of 1900, a similar proclamation was issued for two months in the spring of the year; it is to be annual, ever occurring whenever the grass is green.

All the cases and principles discussed are cases applicable to a sudden epidemic that exists only for the time being and does not exist in the locality quarantined. But this disease of Scabbies exists just as much in Idaho as anywhere else, it exists one year just as much as another. There is no particular limit to it either in time, place or circumstances.

In the brief of counsel for the State in the Supreme Court of Idaho reliance was had upon certain decisions

which we will notice here. The first was upon a Michigan statute quoted in Hurst vs. Warner, 60 N. W. 440; 102; Mich. 238; Minneapolis, St. P. & S. S. M. Ry. vs. Milner, 57 Fed. 276; one a decision of the Supreme Court of Michigan and the other a decision of Judge Severens. In that case they did not attempt to prevent immigrants and passengers although coming from a region afflicted with the small pox from entering the State of Michigan, but only required they be delayed long enough for their baggage to be disinfected. The statute was sustained in both decisions, but in the State court the action of the Governor and Board of Health was held not warranted by the statute itself, but in both decisions the opinion is placed upon the ground distinctly that it is only temporary detention for the purpose of preventing disease and curing it. Compare it with the proclamation here.

There is no attempt in this proclamation or in this statute to cure the disease of scab, no attempt to disinfect the sheep, no attempt at inspection of possibility of inspection or disinfection, but simply a wholesale prohibitation exactly contrary to what was done in Michigan case.

Counsel also quoted the case of St. Louis S. W. Ry. Co. vs. Smith, 49 S. W. 627. That was a case where a disease had broken out among cattle in Louisiana known as Charbon or Anthrax, a sort of splenetic fever very contagious, infectious and virulent and the Board of Health under the statute of Texas excluded cattle of that character from June to November on the presumption that all Louisiana cattle had the disease. We think the decision is erroneous, but it can be distinguished very readily from this from the fact that there was no offer in that case to show that those cattle were healthy as there was in our case that thesheep were healthy. The court said as the basis of its decision:

> "So far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with Charbon or Anthrax."

Exactly the contrary of what we offered to show in our case.

Counsel cited also Compagnie Francaise de Navigation vs. State Board of Health, 25 So., 591. This was a suit for damage against the State Board brought by the owners of a ship for not being allowed to land its passengers who were immigrants from Italy to New Orleans. The Board of Health of the State of Louisiana excluded them for the time being by placing the vessel in quarantine and refused to permit them to land on the ground of an alleged epidemic existing in Italy. It will be seen that the action of the Board of Health was not against all Italians or against any immigrant for a specified time, but was temporary and applied only to that particular ship for the reasons which appeared to them that the immigrants on that ship were affected with disease. The case goes to the extreme limit, but certainly is distinguishable from the one we have in hand.

The case of Train vs. Boston Disinfecting Co., 144 Mass. 523, was a case relied upon by counsel for Idaho. That was a case where the State of Massachusetts provided that all rags brought into that state should be disinfected by some process provided for. It was claimed that that statute was illegal. The statute was exactly opposite of the Idaho statute. We do not object to a statute disinfecting sheep, we object to a statute prohibiting their entry.

Counsel also relied upon the case of Kimmish vs. Ball, 129 U. S. 217 and the following quotation was used in his brief:

> "Such a statute the court held was not a quarantine law, nor an inspection law, but a law which interfered with interstate commerce and was therefore invalid. At the same time the court admitted unhesitatingly that a state may pass laws to prevent animals suffering from contagious or infectious diseases from entering within it. No attempt was made to show that all Texas, Mexican or Indian cattle coming from the malarial districts during the months mentioned were infected with the disease, or that such cattle were so generally infected, that it would have been impossible to separate the healthy from the diseased. Had such proof been given a different question would have been presented for the consideration of the court. Certainly all animals thus infected may be excluded from the State by its laws until they are cured of the disease, or at least until some mode of transporting them without danger of spreading is devised."

Precisely, the state may prevent animals "*suffering from a contagious or infectious disease*" from coming within it. That was not this case, because our sheep had no infectious or contagious disease and as further said *no attempt was made in this case to show that all sheep coming from Utah during the months mentioned were infected with a disease or that the sheep were so generally infected that it would have been impossible to have separated the healthy from the diseased.* It would indeed have been a different question had it been presented. We offered to show exactly the contrary of it.

The statute itself delegates the power to the Governor. It does not in terms exclude sheep for any sixty days, but it authorizes the Governor to legislate upon that subject. In the Supreme Court of Idaho we contended that that was unauthorized delegation and was void for that reason. There our contention was this:

"The particular act of determining conditions is not an executive act. It is necessarily legislative. It is for the legislature and not for the executive or judiciary to say what shall be quarantined and on what terms and in what way, these sheep shall be admitted or handled when they are admitted. The detail must be established by the legislature and not by the executive. This is a power that the legislature cannot delegate to the Governor.

Sutherland on Statutory Construction, Par. 68. p. 69.

Slinger vs. Henneman, 38 Wis. 504-508, 510.

Sutherland on Statutory Construction, Par. 69, p. 71.

State vs. Field, 17 Mo. 529.

Cooley Constitutional Limitation, (First Ed.) pp. 116-117 and note.

Cooley Constitutional Limitation, (Sixth Ed.) p 137.

The Governor, however, far exceeded the power given him. The act only authorizes him to prevent, except under restrictions, the importation of sheep. It nowhere authorizes him to prohibit entirely all sheep It only gave him the power to create certain quarantine rules, which he might do under the name of restrictions. He could provide that they could be imported only by inspection, if it was a reasonable and proper inspection, or other similar restrictions, but he has gone further and not only prohibited under restriction, but prohibited in toto."

We now add that is a question for the Supreme Court of Idaho and perhaps cannot be reviewed here. If not it is because the decision of the Supreme Court of Idaho is conclusive on that subject and the proclamation becomes a part of the legislation of the State of Idaho. It cannot

then be said that this proclamation is not subject to the same right to review in this court to the extent as if it was an act of the legislature. The effect of the legislation and proclamation must be taken together and if the entire combination operates as an interference with the right of Congress to legislate upon that matter under the two clauses of the Constitution it is illegal and must be set aside.

ARTHUR BROWN,
HENRY P. HENDERSON,
For Plaintiff in Error.

215.

FILED
FEB 26 1901
JAMES H. McKENNEY,
Clerk

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

No. 215. (17,658).

Filed Feb 26, 1901.

R. RASMUSSEN,
Plaintiff in Error.

vs.

THE STATE OF IDAHO.

In Error to the Supreme Court of the State of Idaho.

BRIEF FOR DEFENDANT IN ERROR.

SAMUEL H. HAYS,
FRANK MARTIN,
Attorney General of Idaho,
For Defendant in Error.

CAPITAL NEWS PRINT, BOISE, IDAHO.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.
No. 215. (17,658).

R. RASMUSSEN,
Plaintiff in Error.

vs.

THE STATE OF IDAHO.

In Error to the Supreme Court of the State of Idaho.

BRIEF FOR DEFENDANT IN ERROR.

SAMUEL H. HAYS,
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For Defendant in Error.

STATEMENT.

The plaintiff in error was charged with a violation of the sheep quarantine law and regulations of the State of Idaho.

A trial was had before the District Court for Oneida County and the defendant was on June 14th, 1899, found guilty as charged in the information. An appeal was taken to the State Supreme Court and the judgment was there affirmed. (59 Pac. Rep. 933). The case now comes to this Court on writ of error, it being contended that the law in question violates Section 8 Article 1 and Section 2 Article 4 of the Constitution of the United States.

The Act of March 13th, 1899; Session Laws 1899 page 452, is as follows:

> "Section 1. Whenever the Governor of the State of Idaho has reasons to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation, designate such localities and prohibit the importation from them of any sheep into the State, except under such restrictions as, after consultation with the State Sheep Inspector, he may deem proper.
>
> Any person or corporation who, after publication of such proclamation, receives in charge any such sheep from any of the prohibited districts and transports, conveys or drives the same to and within the limits of any of the counties of this State, is punishable by a fine not exceeding $1000 nor less than $200, and is liable for all damages that may be sustained by any person by reason

of the importation or transportation of such prohibited sheep.

Section 2. Upon issuing such proclamation the owners or persons in charge of any sheep being shipped into Idaho, against which quarantine has been declared, must forthwith notify the Deputy Inspector of the county into which such sheep first come, of such arrival, and such owner or persons in charge must not allow any sheep so quarantined to pass over or upon any public highway, or upon the ranges occupied by other sheep or within five miles of any corral in which sheep are usually corralled until such sheep have first been inspected, and any person failing to comply with the provisions of this section is punishable as provided in Section one of this Act, and is liable for all damages sustained by any person by reason of the failure to comply with the provisions of this section.

Section 3. Whereas an emergency exists, this Act shall be in force and effect from and after its passage."

Under and by virtue of Section one of this Act the Governor of Idaho, issued his proclamation, which is as follows:

"Whereas I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease know as scab or scabbies is epi-

demic among sheep in certain localities or districts, viz: In the County of Cache, State of Utah; the County of Box Elder, in the State of Utah; and the County of Elko, in the State of Nevada; and

Whereas, it is known that sheep from said districts are annually moved, driven or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster.

Now, therefore, I, Frank Steunenberg, Governor of the State of Idaho, by virtue of authority in me vested, and after due consultation with the State Sheep Inspector, do hereby prohibit the importation, driving or moving into the State of Idaho of all sheep now being held, herded or ranged within said infected districts, viz: The County of Cache, in the State of Utah; the County or Box Elder, in the State of Utah, and the County of Elko, in the State of Nevada, or which may hereafter be held, herded or ranged within said infected districts, for a period of sixty days from and after the date of this proclamation; after the termination of said sixty days sheep can be moved into this State only upon compliance with the laws of the State of Idaho regarding the inspection and dipping of sheep."

This proclamation was issued on the 12th day of April, 1899. The offense was committed on or about the 20th day of April, 1899.

Plaintiff in error contends that the law above quoted taken in connection with the proclamation is an interference with interstate commerce and therefore void.

It appears from the record that plaintiff in error was in charge of six herds of sheep aggregating about fifteen thousand head in Box Elder County, Utah, on April 12th, 1899. (Trans. pg. 9). At the trial he was asked: "Did your sheep have scabbies or scab?" Trans-pg. 10). Which question was objected to and the objection sustained. Plaintiff in error then offered to show that none of the sheep in question had the scab or scabbies and also that they did not have any indications or hint of having any disease whatever at the time of coming into the State. This offer of proof was rejected. Although there are a number of assignments of error the question at issue was chiefly raised in the manner above mentioned.

ARGUMENT.

In the State Court in addition to the Federal question it was urged:

1. That the act delegates legislative power to the Governor.

2. That the proclamation is insufficient and was not in force until April 13th.

4. That the proclamation was not proved.

5. That the venue was not properly laid.

These points are not now open for discussion in this Court since they raise no Federal question. As to the proper construction of the State Statute and what is

to be regarded as among its terms, no Federal question can arise.

Morley vs. Lake Shore & M. S. R. Co., 146, U. S. 162.

The objection of plaintiff in error does not go so much to the statute as to the manner in which the Governor administered it.

This Court held in New Orleans Waterworks Co. vs. Louisiana Sugar Refining Co., 125 U. S. 18, quoting from another decision that: "Any enactment from whatever source originating, to which a State gives the force of law, is a statute of the State within the meaning of the clause cited relating to the jurisdiction of this Court." In that case it was further held that the provision of the Constitution there in question was aimed at the legislative power of the State and not at the decisions of its Courts or the acts of administrative or executive boards or officers. See also:

Lent vs. Tillson, 140 U. S., 316.
Louisiana vs. Texas, 176 U. S., 1.

If however this Court has jurisdiction, the question then to be considered is whether or not the statute taken in connection with the proclamation is an attempted regulation of interstate commerce or whether it is a quarantine law, as held by the State Court.

Quarantine laws in various forms for preventing the spread of disease among animals are of ancient origin but it is only within the last forty years that the matter has received particular attention. The first Act of Con-

gress on the subject seems to have been passed in 1865 and amended in 1866. (Sec. 2493-5 R. S. United States.). No further legislation was had until 1884, when the Bureau of Animal Industry was established This was followed by the Act of August 30th, 1890, the Acts of March 3rd, 1891, and the Act of March 2nd, 1895.

In the State of Idaho the first statute relating to the subject was passed in 1889. This was repealed in 1891 and in 1895 a new act was passed which was amended in 1897. The amended act was found unconstitutional in part and was followed by the act here in question passed in 1899.

The stock interests particularly in the west are so important and the ravages of disease so great that the growth of the law in late years has been rapid.

In answering the plaintiff in error we contend:

1. That a State may pass a reasonable quarantine law for the protection of domestic animals.

2. That under such a law a quarantine may, if necessary, be declared against a locality where an epidemic exists.

3. That the statute and proclamation provide a reasonable quarantine regulation.

We will first consider the question:

I.

Can the State pass this kind of a quarantine law?

By the Constitution the power "to regulate commerce among the several states" is given to Congress. This may be taken as a grant of general power and necessary incidental powers.

The legislation of Congress pertinent to the present inquiry is Sections 3, 6 and 7 of the Act of May 29th, 1884. (23 Stat. at Large 31)

Those sections are as follows:

"Section 3. That it shall be the duty of the Commissioner of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases, and to certify such rules and regulations to the executive authority of each State and Territory and invite said authorities to co-operate in the execution and enforcement of this act. Whenever the plans and methods of the Commissioner of Agriculture shall be accepted by any State or Territory in which pleuro-pneumonia or other contagious, infectious or communicable disease is declared to exist or such State or Territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Commissioner of Agriculture, and whenever the Governor of a State or other properly constituted authorities signify their readiness to co-operate for the extinction of any contagious, infectious or communicable disease in conformity with the provisions of this Act, the Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this Act, as may be necessary in such investigations and in such disinfection and quarantine measures as may be nec-

essary to prevent the spread of the disease from one State or Territory into another.

Section 6. That no railroad company within the United States, or the owners or masters of any steam or sailing or other vessel or boat shall receive for transportation or transport from one State or Territory to another, or from any state into the District of Columbia or from the District into any State any live stock affected with any contagious, infectious or communicable disease and especially the disease known as pleuro-pneumonia; nor shall any person, company or corporation deliver for such transportation to any railroad company, or master or owner of any boat or vessel, any live stock knowing them to be affected with any contagious, infectious or communicable disease; nor shall any person, company or corporation drive on foot or transport in private conveyance from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State any live stock, knowing them to be affected with any contagious, infectious or communicable disease, and especially the disease known as pleuro-pneumonia; Provided, That the so-called spleuetic or Texas fever shall not be considered a contagious, infectious or communicable disease within the meaning of Sections four, five, six and seven of this Act, as to cattle being transported by rail to market for slaughter when the same are unloaded only to be fed and watered in lots on the way thereto.

Section 7. That it shall be the duty of the Commissioner of Agriculture to notify in writing the proper officials or agents of any railroad, steamboat or other transportation company doing business in or through any infected locality, and by publication in such newspapers as he may select, of the existence of said contagion; and any person or persons operating any such railroad, or master or owner of any boat or vessel or owner or custodian of or person having control over such cattle or other live stock within such infected district, who shall knowingly violate the provisions of Section six of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment."

Whether or not the rules and regulations which seem to have been promulgated by the Department in 1887, were ever certified to the authorities of the State of Idaho, or not, is not shown by the record and we have been unable to learn. In any event, although the record is silent on the subject, there has been no acceptance of the regulations by the State and no cooperation between the State and National Governments. In fact, there is and has been no law of the State whereby the rules of the Department could be adopted or joint action taken. Is the State then, barred from enacting the statute in question. We insist not. The Act did not purport to take from the State

the power claimed, but on the contrary under the terms of Section three, there was a direct acknowledgement of it. The Act sought to secure co-operation. There having been no acceptance by the State of the rules and regulations of the Department the remaining question is whether or not the enactment by Congress of Sections six and seven is a bar to the State law. These sections in substance provided that it should be a misdemeanor to drive stock from one state to another knowing them to be affected with disease. These sections are in no sense a quarantine measure framed for the purpose of preventing the spread of disease.

We think the question is settled by the decision of this Court in the case of Missouri, K. & T. R. Co., vs. Haber, 169 U. S., 613, where the act of Congress mentioned and a somewhat similar State statute were under consideration. It was there said:

> "May not these statutory provision (the State statute) stand without obstructing or embarassing the execution of the act of Congress?
>
> This question, must, of course, be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. Sinnot vs. Davenport, 22 How. 227.
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> We have seen that the first section of the Animal Industry Act provided for an investigation as

to the condition of the domestic animals of the United States, their protection and use, the causes of contagious, infectious and communicable diseases among them, and the means for the prevention and cure of such diseases. The second section provided for an examination as to the best methods of treating, transporting and caring for animals and the means to be adopted for the suppression and extirpation of contagious pleuropneumonia and to guard against the spreading of other dangerous, contagious, infectious and communicable diseases. If any state was ready to cooperate with the Commissioner of Agriculture then, by the third section that officer was authorized to use the money appropriated by Congress in such investigations and in such disinfection and quarantine measures as were necessary "to prevent the spread of the disease from one state or territory to another." While the states were invited to co-operate with the general government in the execution and enforcement of the act, whatever power they had to protect their domestic cattle against such diseases was left untouched and unimpaired by the act of Congress."

This principle was recognized in the case of Railroad Co. vs. Huson, 95 U. S. 465, so much relied in by plaintiff in error, where it was read:

> "It may also be admitted that the police powers of the State justify the adoption of precautionary measures against social evils. Under it a State may legislate to prevent the spread of crime or

pauperism or disturbances of the peace. It may exclude from its limits convicts, paupers, idiots and lunatics, and persons likely to become a public charge as well as persons afflicted by contagious or infectious diseases; a right founded, as intimated in The Passenger Cases, 7 How. 283, by Grier, J., in the sacred law of self-defense. The same principle it may also be conceded would justify the exclusion of property dangerous to the property of citizens of the State; for example animals having contagious or infectious diseases."

Likewise in Patterson vs. Kentucky, 97 U. S. 501, the Court says:

"We have frequently decided that the police power of the States was not surrendered when the people of the United States conferred upon Congress the general power to regulate commerce with foreign nations and between the several States. Hence, the States may by police regulations protect their people against the introduction within their respective limits of infected merchandise. 'A bale of goods upon which the duties have, or have not, been paid, laden with infection, may be seized under health laws, and if it cannot be purged of its poison, may be committed to the flames.' (Gilman vs. Philadelphia, 3 Wall. 713.) So may the States by like regulations exclude from their midst not only convicts, paupers, idiots, lunatics and persons likely to become a public charge but animals having contagious diseases."

And in Railroad Co. vs. Kentucky, 161 U. S. ~~699~~ 701, in quoting from another case, it was said:

> "In conferring upon Congress the regulation of commerce it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country."

Animals which are infected with or which are from the circumstances of their situation likely to convey disease are not merchantable or marketable and are not a proper subject of commerce.

As was said in Gilman vs. Phalidelphia 3 Wall. 713:

> "A bale of goods, upon which the duties have or have not been paid, laden with infection may be seized under health laws, and if it cannot be purged of its poison, may be committed to the flames."

In the License Cases (5 How. 576), it was said:

> "But it must be remembered that disease, pestilence and pauperism are not subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in, but to be prevented as far as human foresight or human means can guard against them."

Likewise in Gibbons vs. Ogden, 9 Wheat. ~~393~~ 235, where it was said by Justice Johnson:

> "It is no objection to the existence of distinct substantive powers that in their application they bear upon the same subject. The same bale of goods, the same cask of provisions or the same

ship that may be the subject of commercial regulation may also be the vehicle of disease. And the health laws that require them to be stopped and ventilated are no more intended as regulations of commerce than the laws which permit their importation are intended to innoculate the community with disease."

We submit that where the State has not accepted the provisions of Section three of the Animal Industry Act that it still has the power to enact and enforce a reasonable quarantine law.

II.

May a quarantine be declared against all animals from a locality where a disease is epidemic?

Quarantine laws are intended to prevent the spread of disease and it follows from the nature of contagious diseases that not only must animals bearing the visible marks of disease be barred but that animals coming from a locality where a disease is epidemic and which are therefore likely to carry disease may be quarantined. Health officers are justified in taking the greatest care for the prevention of disease.

Seavey vs. Preble, 64 Me. 120.

A civilized community should be satisfied with nothing less.

All quarantine laws worthy of the name provide for the execlusion of persons, merchandise or animals coming from infected districts.

Sup. U. S. Rev. Stat. (2nd Ed.) pg. 796-7, Sec. 6 and 9.

Political Code Montana, Secs. 3008 and 3035.

Laws of Wyoming 1899, Sec. 2081-2.

Political Code California, Sec. 3017.

Rev. Stat. Utah. (1898) Sec. 1110.

27 U. S. Stat. at Large, pg. 452, Sec. 7.

Compiled Laws of Nevada (1900) Sec. 825.

Revised Codes N. Dakota (1899) Sec. 1600.

Civil Code Alabama (1896) Sec. 2403.

See also:

Parker & Worthington on Public Health and Safety Sec. 28.

Statutory provisions of this kind have been upheld by the Courts. See:

Hurst vs. Warner, 60 N. W. 440.

Minneapolis St. P. & S. S. Ry. vs. Milner 57 Fed. 276.

St. Louis & S. W. Ry. vs. Smith, 49 S. W. 627.

Compagnie Francaise de Nav. vs. State Board, 25 So. 591.

Young vs. Flower, 22 N. Y. Sup. 532.

The disinfection of an entire class of goods may be required whether actually infected or not.

Train vs. Boston Disinfect. Co. 144 Mass. 523.

Compulsory vaccination has been required.

Morris vs. City of Columbus, 30 S. E. 850.

Duffield vs. School District, 162 Pa. St. 476.

Abeel vs. Clark, 84 Cal. 226.

See also:

Blue vs. Beach, 56 N. E. 89.

This quarantine is nothing more than a quarantine against an infected district, which is clearly justifiable. The offer of proof by plaintiff in error (Trans. pgs. 10 and 11) was as follows: "I offer to show that none of the sheep that he drove into Cassia County had the scab or scabbies, that not one of the sheep that he drove into Oneida County had the scab or scabbies, or any other disease.

* * * * * * * * * * *

I will add that they did not have any indications or hint of having any disease whatever, at the time they came into Cassia County or Oneida County."

This offer was certainly as broad as the circumstances would permit considering the fact that there were fifteen thousand sheep (Trans. pg. 9); that they had just been in a district where the disease was prevalent and the further fact that the disease is caused by a mite or parasite which is for practical purposes microscopic and hides itself where the wool is most abundant. (See, Bulletin 21 on Sheep Scab, page 10; issued by Bureau of Animal Industry.) Also from the further fact that the "tags" of wool which are the first visible signs of the disease may not appear until several weeks after inoculation. Even taking the offer as true the sheep may have been carrying contagion and still have given no hint or indication of having the disease. It is this particular danger that a quarantine of this kind is aimed at.

The Idaho law made it the duty of the Governor to issue his proclamation whenever he found conditions

existing that required it, and it was never intended that the question of the necessity for the proclamation should be submitted to a jury in each case of a prosecution under it. Further than that in this case there was no offer to prove that scab was not epidemic in the districts named or that no necessity existed for issuing the proclamation. Perhaps such proof would not be admissible, but in any event the result is the same, the existence of the disease and the necessity of a proclamation are admitted by the record. The State can not be called on as a preliminary to a prosecution of this kind to show the good faith of its executive. It is his duty to uphold the Constitution and laws of the United States as well as those of the State. A liberal construction should be given to the acts of health officers.

Hengehold vs. Covington, 57 S. W. 495.

This brings us to what we believe to be the important question in the case.

III.

Was the exclusion of all sheep coming from the infected district, for the period of sixty days a reasonable quarantine regulation?

In City of St. Louis vs. Boffinger, 19 Mo. 13, the Court said:

> "If the real resign of the ordinance is a quarantine regulation to guard against the introduction of disease into the city, we will not undertake to determine whether some other measure interfering less with commerce could not as well have accomplished the object."

Whether a regulation of this kind is reasonable or not must depend largely on the nature of the disease to be prevented. In the Bulletin on Sheep Scab, issued by the Bureau of Animal Industry (No. 21 page 8) it is said:

> "The losses from sheep scab have been and are still very severe in most sheep-raising countries. They are due to the shedding of the wool, the loss of condition and the death of the sheep.
>
> Although laws were made for the control of the disease as early as the beginning of the eleventh century, general ignorance in regard to its nature and proper treatment has prevented the successful administration of such laws even to the present day. The disease exists in most of the countries of Europe and also in Asia and Africa, and until recently in Australia. Most civilized countries now control the disease to a certain extent, and limit the losses by the enforcement of stringent sanitary regulations; but the extent of its prevalence is nevertheless surprising. It is a disease not difficult to cure and eradicate and an accurate knowledge of its characterictics with attention to details are all that are needed to secure this result.
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> In the United States some sections have been overrun with sheep scab and many persons engaged in the sheep industry have been forced to forsake it because of their losses from this disease. It is probable that in its destruction of invested capital sheep scab is second only to hog cholera among our animal diseases. The large flocks of

the plains and Rocky Mountain region and the feeding stations farther east have suffered severely and are constantly sending diseased sheep to the great stock yards of this country.

In addition to the direct losses in wool, in flesh and in the lives of our sheep we have suffered immensely in our foreign trade because of the prevalence of this disease. Great Britain appears to have been the first country to prohibit live sheep coming from the United States by an order issued in 1879. Upon representations that there was no foot and mouth disease in the United States this order was rescinded in 1892, but only to be again enforced in 1896 on account of the many scabby sheep sent abroad by our exporters. Our sheep are consequently slaughtered on the docks where landed, the market being restricted and the prices much less favorable than would otherwise be obtained. The markets of continental Europe have been entirely closed to American sheep, as even the privilege of slaughtering at the landing places is denied." (Page 8 Bulletin 21.)

The increase in the number of the sheep and the consequent crowding of the ranges have made conditions worse than in 1898, when the Bulletin was issued.

The sheep here in question came from Utah into Idaho. Utah has been behind all other sheep raising Western states in the enactment of appropriate and effective sheep quarantine laws, but even in that state the diseased condition of its sheep has been recognized.

Section 63 Rev. Stat. Utah (1898) is as follows:

"Every person owning, controlling or ranging sheep in the State shall have all such sheep thoroughly dipped at least once a year in some preparation that will kill scab or shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined in any sum not exceeding one hundred dollars for each offense."

No doubt plaintiff in error would insist there as he does here that his sheep were healthy and no dipping was necessary. It may be possible also that it would be cheaper to pay a small fine than to dip these fifteen thousand sheep.

Referring again to Bulletin 21 we find it stated at pages 13 and 14:

"All matters connected with the vitality of the scab mite have an important bearing in explaining cases of indirect infection on roads over which scabby sheep have been driven, or in fields and sheds where they have been kept. From the facts now at our disposal we can lay down the following important rules:

Scabby sheep should never be driven upon a public road; sheds in which scabby sheep have been kept should be thoroughly cleaned, disinfected and aired, and should be left unused for *at least four weeks* (better two months) before clean sheep are placed in them; fields in which scabby sheep have been kept should stand vacant *at least four weeks* (better six or eight) before being used for clean sheep; a drenching rain will frequently serve to disinfect a pasture but it is well to whitewash the

posts against which scabby sheep have rubbed. Even after observing the precautions here given it is not possible to absolutely guarantee that there will be no reinfection, but the probabilities are against it."

After treating of the life of the parasite the Bulletin further says (page 14):

"Several practical lessons are to be drawn from these figures: first, it is seen that the parasites increase very rapidly, so that if scab is discovered in a flock, the diseased sheep should be immediately isolated; second, if new sheep are placed in a flock, they should either first be dipped, as a precautionary measure or they should at least be kept separate *for several weeks* to see whether scab developes; third, since the chances of infection are very great the entire flock should be treated even in case scab is found only in one or two animals; fourth, as dipping is not certain to kill the eggs, the sheep should be dipped a second time, the time being selected between the moment of hatching of eggs and the moment the next generation of eggs is laid."

As the sheep must necessarily be infected with mites in all stages of development even a second dipping will not entirely free the flock from disease, in fact, there is hardly any disease of domestic animals that requires more continuous and careful attention.

For a complete discussion of the nature of the disease we refer to the Bulletin. We also refer to the Rules and Regulations of the Bureau of Animal In-

dustry. By rule 4 (page 33 Bulletin No. 9) a ninety-day quarantine is established for all diseased animals or those which have been exposed to disease.

Plaintiff in error says in his brief:

> "All sheep in all parts of the country are liable to scabbies; it is a prevalent disease or rather than a disease, a difficulty in raising sheep. There are healthy sheep yet it seems as if the scab was almost a necessary incident to their handling. It has never been eradicated and never can be." (Brief pg. 6.)

We think that this speaks eloquently for the necessity of a quarantine and is a justification for the rigid statutes on the subject enacted in the great wool-growing states within the last five years. That the disease can never be cured is a mistake since it has been eradicated from Australia. (Pages 21 and 23 Bulletin.)

It is argued that the quarantine is unreasonable and bad faith may be imputed from the fact that the proclamation covered two months in the spring and from the further fact that it did not provide for an inspection and for a cure of sheep found diseased.

In reply we say that sheep are not usually moved from place to place in the winter time and owing to climatic conditions they are not dipped during that season. Owners do not desire to dip ewes until after the birth of the lambs. (Bulletin pg. 19). Spring is therefor a period of great danger. The period of sixty days is fixed in the proclamation so that the disease may have time to show itself and make it possible to de-

tect it, and particularly so that the time for shearing may be passed when the disease will certainly be discovered by the owner and may be more readily observed by the Inspector. In this connection it should be noticed that the entire period covered by this proclamation is sixty days and sheep are not required to wait sixty days at the State line before entering the State. Shearing time in the locality mentioned comes in May and June. As to an inspection and prescribing remedies we do not think we are bound to prescribe a cure for Utah sheep, but in any event it was provided by the proclamation that after a reasonable time had elapsed sufficient for the disease to show itself and the sheep had been sheared, that then "sheep can be moved into this State only upon compliance with the laws of the State of Idaho regarding the inspection and dipping of sheep."

As to the State laws referred to, see Laws of 1899 page 352.

It seems to be urged that the statute delegated legislative authority to the Governor. On this point we cited in the State Court:

Field vs. Clark, 143 U. S. 649.
Hurst vs. Warner, 60 N. W. 440.
Sang Lung vs. Jackson, 85 Fed. 502.
Los Angeles Co. vs. Spencer, 59 Pac. 202.
Martin vs. Witherspoon, 135 Mass. 175.
United States vs. Ormsbee, 74 Fed. 207.

That question, however, is not a Federal question and is not before this Court.

The courts of Idaho have ever been vigilant in upholding the Constitutional provision relative to interstate commerce. They held to a more stringent rule in Territory vs. Evans, 2 Idaho 634, than this Court did in Geer vs. Connecticut, 161 U. S. 519, where the Idaho case is cited. In State vs. Duckworth, 51 Pac. 456, the Court promptly declared void a statute so loosely and carelessly drawn as to interfere with commerce between the states.

We do not dispute the principles of law laid down in Railway Co. vs. Husen. It should be noted, however, that after the establishment of the Bureau of Animal Industry and after the disease of Texas fever came to be better understood the Department of Agriculture prescribed even a longer period of quarantine than the Kansas Statute. (Regulations Bureau of Animal Industry page 26.) The Husen case must be considered also in light of Kimmish vs. Ball, 129 U. S. 217, and Railway Co. vs. Haber, 169 U. S. 613.

In conclusion we say, that the State had the power to pass the law and authorize the quarantine, and that the quarantine directed as it was against an infected district for a period of sixty days was reasonable and therefore the judgment should be affirmed.

Respectfully submitted,

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For Defendant in Error.

NOTE.

In relation to sheep scab, we refer in addition to the Bulletin to the following:

Report Chief of Bureau of Animal Industry, 1899, pg. 247.
Same report for 1900, pg. 216.
Administrative Work of the Federal Government in relation to the Animal Industry, (1899), pg. 452.

Supreme Court of the United States.

No. 215.—October Term, 1900.

R. Rasmussen, Plaintiff in Error, vs. The State of Idaho. } In error to the Supreme Court of the State of Idaho.

[April 22, 1901.]

On March 13, 1899, the legislature of Idaho passed an act, the first section of which contains the following:

"Whenever the governor of the State of Idaho has reason to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory or that conditions exist that render sheep likely to convey disease, he must thereupon, by proclamation, designate such localities and prohibit the importation from them of any sheep into the State, except under such restrictions as, after consultation with the state sheep inspector, he may deem proper." (Session Laws Idaho, 1899, p. 452.)

Subsequent provisions of the statute prescribed penalties for its violation. On April 12, 1899, the governor of Idaho issued the following proclamation:

"Proclamation.

Scheduling certain Localities on Account of Scab or Scabbies.

State of Idaho, Executive Office.

"Whereas, I have received statements from reliable wool growers and stock raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease known as scab or scabbies is epidemic among sheep in certain localities or districts, viz., in the county of Cache, State of Utah; the county of Box Elder, in the State of Utah; and the county of Elko, in the State of Nevada; and,

"Whereas, it is known that sheep from said districts are annually moved, driven or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster:

"Now, therefore, I, Frank Steunenberg, governor of the State of Idaho, by virtue of authority in me vested, and after due consultation with the State sheep inspector, do hereby prohibit the importation, driving or moving into the State of Idaho of all sheep now being held, herded or ranged within said infected districts, viz., the county of Cache, in the State of Utah; the county of Box Elder, in the State of Utah, and the county of Elko, in the State of Nevada, or which may hereafter be held, herded or ranged within said infected districts, for a period of sixty days from

and after the date of this proclamation; after the the termination of said sixty days sheep can be moved into this State only upon compliance with the laws of the State of Idaho regarding the inspection and dipping of sheep."

Under this statute and the accompanying proclamation the plaintiff in error was arrested, tried and convicted in the District Court of the Fifth Judicial District sitting in and for the County of Oneida, State of Idaho. His conviction was sustained by the Supreme Court of the State, (59 Pac. Rep. 933,) and to reverse such judgment of conviction this writ of error was sued out.

Mr. Justice BREWER delivered the opinion of the Court.

The judgment of the Supreme Court of Idaho establishes that there is no conflict between this legislation and the constitution of the State, and it is not within the province of this court to review that question. (*Merchants' Bank* v. *Pennsylvania*, 167 U. S. 461, and cases cited in the opinion.)

The single question, therefore, for our consideration is whether this legislation conflicts with the Federal Constitution. Plaintiff in error relies largely on *Railroad Company* v. *Husen*, (95 U. S. 465.) In that case the validity of an act of the State of Missouri was presented. The act provided that "no Texas, Mexican or Indian cattle shall be driven or otherwise conveyed into or remain in any county in this State between the first day of March and the first day of November in each year by any person or persons whatsoever." It was held to be in conflict with the constitutional grant of power to Congress to regulate commerce between the States. In the opinion the police power of the State, the power by which the State prevents the introduction into its midst of noxious articles, was fully recognized, but attention was called to the fact that there was an absolute prohibition of the bringing in of Texas, Mexican or Indian cattle during eight months of the year, without reference to the actual condition of the cattle, and it was said:

"Tried by this rule, the statute of Missouri is a plain intrusion upon the exclusive domain of Congress. It is not a quarantine law. It is not an inspection law. It says to all natural persons and to all transportation companies, 'you shall not bring into the State any Texas cattle or any Mexican cattle or Indian cattle, between March 1 and December (November) 1 in any year, no matter whether they are free from disease or not, no matter whether they may do an injury to the inhabitants of the State or not. . . . Such a statute, we do not doubt, is beyond the power of a State to enact. To hold otherwise would be to ignore one of the leading objects which the Constitution of the United States was designed to secure." (p. 473.)

It will be perceived that the act was an absolute prohibition operative during eight months of each year. It was an act continuous in its force;

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provided for no inspection, and was predicated on the assumption that the State had the right to exclude for two-thirds of each year the introduction of all those kinds of cattle, sick or well, and whether likely to distribute disease or not.

In the case before us the statute makes no absolute prohibition of the introduction of sheep, but authorizes the governor to investigate the condition of sheep in any locality, and, if found to be subject to the scab or any epidemic disease liable to be communicated to other sheep, to make such restriction on their introduction into the State as shall seem to him, after conference with the State sheep inspector, to be necessary. The executive acted on the authority thus conferred, and, after consultation with the State sheep inspector and examination of the matter, found that the scab was epidemic in certain localities in Utah and Nevada, and that if sheep from those localities were moved therefrom into Idaho they would spread infection and disease among the sheep of the State, and thereupon forbade the introduction of sheep from such localities for the space of sixty days. It will be perceived that this is not a continuous act, operating year after year irrespective of any examination as to the actual facts, but is one contemplating in every case investigation by the chief executive of the State before any order of restraint is issued. Whether such restraint shall be total or limited, and for what length of time, are matters to be determined by him upon full consideration of the condition of the sheep in the localities supposed to be affected. The statute was an act of the State of Idaho contemplating solely the protection of its own sheep from the introduction among them of an infectious disease, and providing for only such restraints upon the introduction of sheep from other States as in the judgment of the State was absolutely necessary to prevent the spread of disease. The act, therefore, is very different from the one presented in *Railroad Co.* v. *Husen*, *supra*, and is fairly to be considered a purely quarantine act, and containing within its provisions nothing which is not reasonably appropriate therefor. There being no other Federal question in the case the judgment of the Supreme Court of Idaho is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.